

My resume, unofficial transcript, and writing sample are enclosed. Emory Law School will submit my recommendations from Professors Martha Duncan, James Tomkovicz, and Michelle Willis. I would welcome the opportunity to interview with you, and look forward to hearing from you soon at patrick.mcmanus@emory.edu or (510) 381-7922.

Respectfully,

Patrick McManus

PATRICK MCMANUS

527 Bridlewood Circle, Decatur, GA 30030
pgmcmman@emory.edu | (510) 381-7922

EDUCATION

Emory University School of Law
Candidate for Juris Doctor
Atlanta, GA
May 2024

- GPA: 3.384
- Activities: Student Bar Association, Intellectual Property Society, Business Society

University of California, Berkeley
Bachelor of Arts in Pure Mathematics
Berkeley, CA
December 2014

- Activities:
 - Coordinated pre-regatta strategizing dinners at Marin Rowing
 - Organized student group to explore the diversity of the California coastal flora
- Honors: Finalist, National Merit Scholarship

EXPERIENCE

Freelance
Math Tutor
Berkeley, CA
January 2017 – May 2019

- Tutored students in graduate-level math

Freelance
Math Tutor
Berkeley, CA
January 2017 – May 2019

- Tutored students in graduate-level math

UC Botanical Garden at Berkeley
Volunteer
Berkeley, CA
January 2016 – May 2016

- Responsible for gardening and landscape maintenance in the Mediterranean Flora section of the garden

Edward McManus Trust and Estate
Berkeley, CA

Heir

August 2014 – August 2017

- Researched trusts and estates
- Filed probate pleadings
- Worked with the Office of Comptroller of Currency to recover missing documents

Hill & Watchko, LLC

Alpharetta, GA

Summer Intern

June 2022 – August 2022

- Researched current and potential future legal questions
- Researched specific cases handled by the firm
- Prepared documents
- Participated in interviews with clients
- Accompanied firm partner to court appearances
- Worked with local court offices to retrieve documents
- Signed documents

**ADDITIONAL
INFORMATION**

- Student Member of Atlanta Bar Association
- Proficient in French and Spanish
- Play Classical Guitar and Piano
- Knit Aran/Cable Sweaters

Excerpt from Memo for Legal Writing and Research Course (Spring 2021)

DISCUSSION

Jacques likely will be able to prove clearly and convincingly that he was equitably adopted by McHenry because McHenry has proven intent to adopt by words and there is sufficient evidence to prove most of the factors a court uses to evaluate if adoptive parent and child had a sufficiently close and enduring relationship

The legal theory most likely to be successful in allowing Jacques to inherit as an heir is that he was equitably adopted by McHenry. Equitable adoption is essentially a principle which allows courts that find an unfulfilled intent by the decedent to adopt to remedy this by allowing the child to adopt as a natural child. Est. of Ford v. Ford, 82 P.3d 747, 750 (Cal. 2004).

The statute governing equitable adoption is Cal. Prob. Code § 6455 (West 2021); however, since its entire content is that it does not displace any common law on equitable adoption, we must look wholly to case law to determine the rules governing equitable adoption.

The roots of the doctrine of equitable adoption lie in contract theory; the theory was that the adoptive parent and the child made a contract, in most cases implicitly, by which both would assume the duties of parent and child, and that the court, by allowing inheritance as an heir, was enforcing specific performance of this contract. Estate of Radovich v. Citizens Nat'l Tr. and Savings Bank, 308 P.2d 14, 23 (Cal. 1957) (in bank).

However, over the years, courts found inconsistencies with basing this in contract theory. For example, specific performance of adoption cannot be enforced after the death of the adopter. Estate of Ford, 82 P.3d at 752-53. Also, there was the problem that a minor cannot make a contract. Id. at 753. Thus, the theory behind equitable adoption has evolved into one that is entirely based in equity and intent. Id. at 752.

The rule currently used by the courts is that the adoptee must prove that: (1) the adoptive parent has manifested an intent to adopt the child, either by words or conduct; and if that can be

proven, they must also prove (2) the adoptive parent and the adoptee have maintained until the end of the decedent's life a parent-child relationship of such strength that equity requires the court to recognize it. Id. at 753-54. Because this is not specifically backed by a statute, and one of the parties affected is dead, so they can no longer testify as to intent, the court requires the proof of both elements to be "clear and convincing," a higher standard than usual in civil court. Id. at 754.

In this case, neither element of the rule can be proven *prima facie* to the needed standard of proof, so both must be examined. Jacques's case most likely satisfies the two elements of the rule clearly and convincingly because: (1) McHenry has shown intent to adopt by words by asking his secretary to do so twice; and (2) six of the eight factors that prove a close and enduring parent-child relationship are satisfied, while the last two are readily explicable.

I. **The court will likely find McHenry showed intent to adopt by words by stating an intent to do so to Jacques and by asking his assistant to look into adopting Jacques on two separate occasions**

The first element is that the claimant must prove that the decedent had an intent to adopt them. The reason the court looks for this is that, since the person is dead and thus can no longer testify, the court must itself do its best to establish their intent. Est. of Ford, 82 P.3d 753-54. Furthermore, not requiring intent to adopt would open up the possible claims too widely, allowing any foster or step child lovingly brought up to claim inheritance, given the absence of testimony from the decedent. Id.

To determine proof of intent to adopt, the court examines the words and acts of the parent. Est. of Ford, 82 P.3d at 754. Some examples of proof by words are: an express unperformed agreement to adopt, whether oral or written, a promise, the decedent's statement of their intent to

adopt, and a representation by the decedent to the public or the child that they are their natural or legally adopted child. Id. An example of proof by acts would be an unconsummated or invalid attempt to adopt. Id.

Courts have looked at various combinations of these tests. An attempt to adopt, even an invalid one, if it is accompanied by public acknowledgment, can suffice to prove intent, with no more statements or agreements needed. Est. of Wilson, 168 Cal. Rptr. at 536. The court has also found that public acknowledgment, together with multiple inquiries to one person whose consent was needed, can by themselves suffice to prove intent. Mingo, 745 F.2d at 539. If those two are both proven, no subsequent attempt at adoption is needed. Id. at 538. On the lower end, no public acknowledgment and only one statement of intent, to a person not involved, was found not to pass the test for a statement of intent. Est. of Ford, 82 P.3d at 755.

It is also worth noting a couple of observations about to whom the statement of intent could be addressed. First, the statement of intent does not have to be to the mother; it can be instead to the child. In re Grace's Estate, 200 P.2d 189, 195 (Cal. Dist. Ct. App. 1948). Second, in all cases where intent was proved by a statement of intent to a person, it was made to a person involved in the transaction, and hypothetical consent was given; in other words, the child or their natural parent agreed that if an adoption were made, they would consent.

Here, we have enough of the tests satisfied to prove intent. First, McHenry publicly acknowledged Jacques as his son in multiple ways. For instance, he named him as a McHenry in the Christmas photos and went to his school events. Fresca confirms that McHenry treated Jacques “like a son.”

Second, McHenry showed intent to adopt in the form of an inquiry to Jacques, a person whose consent was needed, and Jacques responded positively to the hypothetical, just as in

Mingo. Id. at 539. It is true that McHenry made the statement of intent to Jacques only one time; however, he also made an implied statement of intent to Fresca, in his second attempt: he said, “I should have adopted [Jacques]” and then stated an immediate intent to apply to adopt Jacques, saying “Yeah, do it.”

This sequence of events clearly shows he intended at that point to adopt Jacques. Thus, we can see that McHenry has made a statement of intent to adopt to two people, Jacques and Fresca, at least one time each. This is about equivalent in strength to Mingo, since there the court found multiple statements of intent to only one person sufficed. Id.

Given that in Mingo, the totality of the evidence was the statements, the hypothetical consent of an involved party, and public acknowledgment of the child as their natural or adopted child, all of which we have here, the facts should suffice to prove that McHenry had an intent to adopt Jacques. Furthermore, we have even more evidence; unlike in Mingo, it can be argued that McHenry was making an attempt to adopt, the second time.

One counterargument is that we cannot deduce McHenry's intent to adopt from the second attempt, because he was not in his right mind due to the medicine and his illness. However, we can deduce that that is not the right explanation, and instead that the correct interpretation is that he was doing this out of a reasoned intent, from his previous explanation to Fresca about why he dropped the first attempt. He was afraid the mother would object and interfere with their relationship, perhaps even taking Jacques away from McHenry. It seems clear that his realization that he was about to die is what rendered this point moot, causing him to decide on a second attempt. Thus, the court should conclude that McHenry exhibited sufficiently strong indications of intent to adopt Jacques.

II. **The court likely will find that McHenry's and Jacques's conduct proves that their relationship went beyond that of coach and player and exhibited the closeness and deep love of a natural father and son relationship that is needed to grant Jacques an equitable adoption**

For the first factor, living with the decedent for a long time, the court tries to determine this because it demonstrates a strong parent-child bond: since they are raised by the adoptive parent, they are the child's main parental figure. In looking to determine if this factor is satisfied, the court asks whether the child lived for a number of years with the decedent and whether the child had significant contacts with its natural parents during that period. Est. of Wilson v. Van Dett, 168 Cal. Rptr. 533, 536 (Ct. App. 1980).

For the second factor, the court looks to see if the parent ever publicly acknowledged the child as theirs. This helps prove the deep familial feelings of the parent for the child, because if they love them, they are proud of it, and want the world to recognize their bond, and accord the child the same privileges as their natural child. To see if this factor has been fulfilled, the court asks if the decedent made statements, for example to friends, that the child has been adopted, or listed the child as their adopted child on government forms. In re Est. of Rivolo, 15 Cal. Rptr. at 270.

With respect to the third factor, whether the child adopted the surname of the adoptive parent, this offer and acceptance by the child of the family's surname is at a deeper level the child becoming a family member; in other words, it proves a familial relationship between them.

The court does not always require the adoption of the surname, if there is some clear other reason that the child had for not doing so. Mingo, 745 F.2d at 540 (child did not adopt surname to avoid embarrassment with non-adoptee biological siblings).

Applicant Details

First Name	E. Shane		
Last Name	Munton		
Citizenship Status	U. S. Citizen		
Email Address	esmunton@law.byu.edu		
Address	<table> <tr> <th>Address</th> </tr> <tr> <td> Street 1502 S LAKE VIEW TERRACE RD City SARATOGA SPRINGS State/Territory Utah Zip 84045-3848 Country United States </td> </tr> </table>	Address	Street 1502 S LAKE VIEW TERRACE RD City SARATOGA SPRINGS State/Territory Utah Zip 84045-3848 Country United States
Address			
Street 1502 S LAKE VIEW TERRACE RD City SARATOGA SPRINGS State/Territory Utah Zip 84045-3848 Country United States			
Contact Phone Number	9515819294		

Applicant Education

BA/BS From	Brigham Young University-Hawaii
Date of BA/BS	April 2019
JD/LLB From	Brigham Young University--J. Reuben Clark Law School
	https://law.byu.edu/
Date of JD/LLB	April 30, 2024
Class Rank	Below 50%
Law Review/Journal	Yes
Journal(s)	Journal of Public Law
Moot Court Experience	Yes
Moot Court Name(s)	Brigham Young University Moot Court Team

Bar Admission

Prior Judicial Experience

Judicial Internships/
Externships **No**
Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Nunez, Carolina
nunezc@law.byu.edu
801-422-2079
Fernando, Bustos
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Salgado, Richard
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

E. SHANE MUNTON

951.581.9294 - ESMUNTON@LAW.BYU.EDU

August 3, 2023

Judge Kimberly Swank
201 South Evans St.
Greenville, NC 27858

Dear Judge Swank,

As an aspiring commercial litigator and trial attorney, I am excited to apply for a 2024 clerkship in your chambers.

Attached I have included a writing sample that demonstrates my writing and editing abilities. The sample, from an appellate brief writing class, is a mock appellate brief for the Andy Warhol copyright fair use case that was pending in the Supreme Court this term.

I have also included recommendation letters in my application from the following:

Richard Salgado, Head of Dallas Litigation Group, McDermott, Will & Emery, Dallas

Fernando Bustos, Managing Member, Bustos Law Firm, Lubbock

Associate Dean Carolina Nuñez, BYU Law School

Lastly, I am including a list of references of individuals who have agreed to support my application to your chambers. I provide their emails below:

- Judge Brantley Starr, U.S. District Court for the Northern District of Texas Judge_Starr@txnd.uscourts.gov
- Jeremy A. Fielding, Partner, Kirkland and Ellis, Dallas jeremy.fielding@kirkland.com
- W. Shane Cohen, Deputy District Attorney, Salt Lake County District Attorney's Office scohen@slco.org

Thank you and I hope to have the opportunity to discuss this opportunity with you further.



E. Shane Munton

E. SHANE MUNTON

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EDUCATION

J. REUBEN CLARK LAW SCHOOL, BYU | PROVO, UT

Juris Doctor Candidate

Apr 2024

- Skills and Training Coordinator on the Trial Advocacy Team
- Moot Court Team
- Editor on the Journal of Public Law

BRIGHAM YOUNG UNIVERSITY--HAWAII | LAIE, HI

Bachelor of Science, Accounting; Political Science Minor

Jun 2019

- College Reading and Learning Association (CRLA) Certificate
- President and Founder, Contemporary Issues Debate Association (CIDA)

EXPERIENCE

KOBAYASHI, SUGITA, AND GODA | HONOLULU, HI

Summer Associate

May 2023 – Current

- Research complex commercial litigation issues
- Draft motions, responses, and memos on various litigation issues

DISTRICT ATTORNEY'S OFFICE | SALT LAKE COUNTY, UT

Law Clerk

Jul 2022 – Aug 2022

- Drafted motions, responses, and memos on various criminal legal issues
- Attended preliminary hearings and other trial-focused proceedings

BUSTOS LAW FIRM | LUBBOCK, TX

Law Clerk

May 2022 – Jun 2022

- Researched complex commercial litigation, employment (FLSA), and constitutional issues
- Drafted motions, correspondences to opposing counsel, and internal memos
- Performed shelf-checks, utilizing my knowledge of the Bluebook

BYU LAW TRIAL ACADEMY, SPONSORED BY KIRKLAND & ELLIS LLP | DALLAS, TX

Selected Participant

May 2022

- Attended seminars for and practiced advanced trial skills on topics including:
 - Opening statements
 - Closing statements
 - Direct, Cross, and Re-Direct examinations

COMPETITIONS

WECHSLER NATIONAL FIRST AMENDMENT MOOT COURT COMP., SPONSORED BY AMERICAN UNIVERSITY | WASHINGTON D.C.

Octofinalists

Nov 2022

LINDA ANDERSON TRIAL COMP., SPONSORED BY ARNOLD & ITKIN LLP | PROVO, UT

Second Place Team

Oct 2022

1L WOODY DEEM TRIAL COMP., SPONSORED BY BYU LAW | PROVO, UT

First Place Team

Jan 2022

INTERESTS

- Interests include surfing, fishing (spear, fly, deep-sea), woodworking and home projects, underwater tunnel diving, video and board games, snowboarding, wakeboarding, and more

Name: Eric Shane Munton
StudentID: 100512180

STUDENT PROGRESS REPORT

Date Printed: May 20, 2023

BRIGHAM YOUNG UNIVERSITY
J. REUBEN CLARK LAW SCHOOL
PROVO, UTAH 84602

Cumulative Grade Information						Pre-Law Schools					Degree	Date	
Credit Hours: 60						GPA: 3.29						BRIGHAM YOUNG UNIVERSITY, HAWAII	
Grade Points: 1776													
Class Standing:													
Catalog		Semester				Catalog		Semester					
Number	Title of Course	Hours	Grade	Professor		Number	Title of Course	Hours	Grade	Professor			
Fall Semester, 2021						796R 16 Con Law in Comm Lit						2.00	3.2
505	3 Torts	4.00	3.1	C. Núñez									
510	3 Contracts	4.00	3.3	B. Gotberg									
520	3 Property	4.00	3.6	B. Rebeiro									
545	6 Intro to Legal Research & Writ	3.00	3.2	C. Bramble, S. Nev...									
552	1 Prof. Development	0.50	P	C. Richards, S. Gr...									
Winter Semester, 2022													
515	3 Civil Procedure	4.00	3.3	A. Nielson									
525	3 Criminal Law 1	3.00	3.4	E. Dishman									
530	3 Structures of the Constitution	3.00	3.3	L. Grow									
535	3 Legislation & Regulation	3.00	3.3	T. Lee									
546	6 Introduction to Advocacy	2.00	3.2	C. Bramble, S. Nev...									
552	3 Prof. Development	0.50	P	S. Grandy, C. Rich...									
Fall Semester, 2022													
608	1 Bankruptcy	3.00	3.1	B. Gotberg									
610	1 Business Organizations	3.00	3.3	W. Clayton									
625	1 Evidence	3.00	3.5	S. Goodwin									
743	1 Appellate Brief Writing	3.00	3.5	J. Nielsen									
792R	3 Journal of Public Law Cocurr...	1.00	P	A. Hickman Pierson									
792R	5 Trial Advocacy Cocurricular ...	1.00	P	J. Kwarm, A. Grover									
792R	2 Moot Court Cocurricular Pgms	1.00	P	C. Galli									
Winter Semester, 2023													
615	1 Secured Transactns	3.00	3.4	B. Gotberg									
668	1 Negotiation	3.00	2.8	S. Kelson									
669	1 Civil Discovery	2.00	3.1	S. Owen									
722	1 Trial Advocacy	2.00	3.5	S. Bednar									
792R	3 Cocurricular Pgms	1.00	P	A. Hickman Pierson									
792R	5 Cocurricular Pgms	1.00	P	J. Kwarm, A. Grover									

Degree Awarded:

Graduation Date:

Comments:

D. CAROLINA NÚÑEZ
Associate Dean for Research and Academic Affairs
Charles E. Jones Professor of Law

J. REUBEN CLARK LAW SCHOOL

BRIGHAM YOUNG UNIVERSITY
536 JRCB PROVO, UTAH 84602-8000
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August 03, 2023

The Honorable Kimberly Swank
United States Courthouse Annex
215 South Evans Street
Greenville, NC 27858-1121

Dear Judge Swank:

I write in support of Eric "Shane" Munton's application for a clerkship in your chambers. Shane was a student in my Torts class during his first year of law school. Shane was always prepared, engaged in the ongoing class discussion, and eager to apply what he was learning in law school to real world scenarios. I have no doubt that Shane would bring that same enthusiasm for the law to your chambers. I hope my experiences with Shane, as described below, will help illustrate what I appreciate about Shane.

In my Torts class, I call on students randomly and ask them to engage in a dialogue with me about the assigned reading. I can quickly tell who is prepared and who is not, based on students' ability to follow the dialogue. When students start the first semester of their first year of law school, they are generally very diligent about completing the assigned reading. As the semester progresses, some students become more casual about preparing. I do not recall Shane ever being unprepared when I called on him.

Even better, I could tell that Shane's motivation for being prepared was a genuine interest in the material rather than a raw fear of being called on when he was unprepared. Rather than simply answer my questions with as few words as possible, Shane was willing to think aloud (which is exactly what I hope students will do in response to my questions) and work through various arguments that might be relevant to the question I asked.

Shane also volunteered his own questions and hypotheticals during class. Having students who are engaged in class and who are willing to contribute ideas is what fuels productive class discussions. I rely on students like Shane to help maintain an energetic classroom dynamic. His contributions evidenced a genuine interest in the topics of discussion.

In fact, Shane often asked questions or volunteered comments that related materials we were learning in class to current events or well-known cases. In my class, I give students repeated opportunities to ask me about anything that they are wondering about. Students frequently ask about my career in the law, about navigating law school, and about specific topics from class. The year that Shane was in my class, the students seemed to be particularly interested in current events, including several trials that raised questions of self-defense (a topic we had discussed in our class). I recall Shane being particularly interested in and contributing to these discussions.

Besides his clear interest in and enjoyment of the law, Shane is also a pleasure to talk to, which I believe will translate well into the close working relationships of judicial chambers. Shane is kind, has a good sense of humor, and does not hesitate to help those in need. I overheard Shane inviting a fellow student to a fundraiser for a family who had recently lost the father to Covid. Making time for service despite the demanding schedule of a first-year law students is very admirable. His example inspired me to make the time to participate in the fundraiser.

I am convinced that Shane will be a strong advocate during his career. His interest in the law, coupled with his natural compassion for others, will be assets to him. I believe Shane can, as a result, be an asset to your chambers, and I hope you will consider him for a position. If you have any questions, please call me (801-422-0866) or email me (nunezc@law.byu.edu). I would be happy to provide any other helpful information.

Sincerely,

D. Carolina Núñez

Carolina Nunez - nunezc@law.byu.edu - 801-422-2079

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*Also licensed in the State of New Mexico

ALEX M. BUSTOS
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Of Counsel
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fbustos@bustoslawfirm.com

May 31, 2023

Re: Eric Shane Munton

To Whom It May Concern:


Shane Munton is a BYU law student who clerked for me last summer and did a great job. I recommended that he apply to serve as a judicial law clerk. While working with me, he was very attentive, detail-oriented, and displayed an incredible work ethic. He got along well with everyone in the office, and although he had only one year of law school under his belt, he was a very good law clerk in terms of finding the answers to the research questions I posed to him. He did a good job assisting me on a particularly difficult commercial litigation case.

Shane displays the type of character and legal ability that would make him an exceptional law clerk. He displays good temperament, high intelligence, and a strong dedication to justice. I recommend him without reservation.

Please feel free to contact me if you have any questions about Mr. Munton, and thank you for your consideration.

Sincerely,

BUSTOS LAW FIRM, P.C.


Fernando M. Bustos

FMB/db

No. 21-869

In the
Supreme Court of the United States

ANDY WARHOL FOUNDATION FOR the VISUAL ARTS,
INC.,
Petitioner,
v.

Lynn GOLDSMITH, et al.,
Respondent.

On Writ of Certiorari from the United States
Court of Appeals for the Second Circuit

BRIEF FOR PETITIONER

EXAM NUMBER 256
COUNSEL FOR *PETITIONER*

QUESTION PRESENTED

In the realm of Federal Copyright law, a secondary work is transformative when it goes beyond merely superseding the objects of an original creation, and instead “*adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message.*” *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 579 (1994). This Court has never ignored the meaning or message of a new work in a transformative analysis. Nor has it held that a secondary work is not transformative when it recognizably derives from and maintains essential elements of an original work. Yet the Second Circuit has done both, signifying a certain level of misunderstanding amongst the circuits regarding the transformative doctrine.

Issue: Whether a secondary work is transformative when it has a new meaning and message despite it recognizably deriving from and maintaining essential elements of an original work.

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**United States District Court for the Southern
District of New York**

*Andy Warhol Found. for the Visual Arts, Inc. v.
Goldsmith*, 382 F.Supp.3d 312 (S.D.N.Y. 2019) . 11,
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JURISDICTIONAL STATEMENT

The court of appeals' judgment was entered on March 26, 2021. The petition was granted on March 28, 2022. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

INTRODUCTION

American art director George Lois once said, “[y]ou can be cautious or you can be creative, but there's no such thing as a cautious creative.” Were this Court to side with the Second Circuit, it would be forcing a new cautious standard upon the world of creatives. This Court has held that for a new work that is based on an original to be transformative, it needs to create something new. It needs to use the objects of the original as raw material and create something with a further purpose or different character. Artists and creatives should not have to worry that their new works are not different enough to please a court. Rather they should be free to continue on as they have been for over a century; using original works as inspiration to continue public discussion on various topics.

Andy Warhol is an acclaimed artist whose work has changed the world for the better. His art acts as social commentary, sparking change and progress as it causes society to question their consumer habits and their obsession with celebrities. To deem his work non-transformative would be to societies’ detriment as it would discourage future social engineers from creating, in the fear that they will not have protection for their artwork. Warhol’s “Prince Series” is one of

Warhol's creations that comments on and critiques societies' obsession with celebrities. To find his work transformative, all this Court needs to do is use the low transformative standard that was set by Congress and a plethora of American Scholars, including this Court in *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

A new work is transformative when it "adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message." *Id.* at 579. The Second Circuit wants to change this standard and require a new work to have significant additions or alterations in order to be transformative, but the standard is clear. Were this Court to change its caselaw and adopt the Second Circuit's more rigid understanding of the standard, creation would be negatively affected. Congress would be forced to change the law as the standard would cease promoting the arts and sciences and their overall legislative intent for passing 17 U.S.C. § 107. Overall, this Court should reaffirm the transformative standard that has existed for well over a century and hold that Warhol's "Prince Series" is transformative as a matter of law.

STATEMENT OF THE CASE

Andy Warhol was an American artist who significantly contributed to contemporary art throughout his career. His works are well-known throughout the world. Lynn Goldsmith is a popular photographer whose work focuses mainly on portrait and concert photography of rock-and-roll musicians.

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This case arises from the controversy surrounding Andy Warhol's use of Lynn Goldsmith's Prince Photograph (Exhibit A) to create sixteen unique works known collectively as the "Prince Series" (Exhibit B).

Exhibit A (Goldsmith Photograph)



Exhibit B (the "Prince Series")



Factual History¹

In December 1981, Newsweek magazine assigned Lynn Goldsmith to take a series of portrait photographs of Prince Rogers Nelson (popularly known as “Prince”). Ms. Goldsmith creatively arranged the lighting in the studio and the makeup on Prince’s face to “accentuate [Prince’s] sensuality,” and capture his “willingness to bust through what must be his immense fears to make the work that he wanted to make.” Her intention, or message, was to portray Prince as a vulnerable human being. All-in-all she took and copyrighted twenty-three photos: twelve in black and white and five in color.

In 1984, Ms. Goldsmith licensed one of her photos of “Prince” (Exhibit A) to Vanity Fair magazine to use as an artist reference. Vanity Fair then commissioned Mr. Warhol to create an image of Prince, based on the photograph. The secondary work Mr. Warhol created was then published with an article entitled “Purple Fame” in Vanity Fair’s November 1984 issue (Exhibit 3). Mr. Warhol, now deceased, was well known for creating images that portrayed celebrities as “larger-than-life icons.” Mr. Warhol also created fifteen other secondary works that were all based on the same photograph. These works collectively became known as the “Prince Series” (Exhibit B).

¹ All facts are from *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 11 F.4th 26 (2d Cir. 2021) starting on page 32.

Exhibit 3 (Vanity Fair Article)

After Mr. Warhol's death in 1987, the Andy Warhol Foundation ("AWF") was created. The AWF acquired title to and copyrighted the "Prince Series." Nothing notable happened until after Prince's death in 2016. It was at this time that Vanity Fair's parent company, Condé Nast, reached out to the AWF and obtained a commercial license to use another "Prince Series" image in their magazine. It was only after this that Ms. Goldsmith learned of the "Prince Series" existence. Ms. Goldsmith then reached out to the AWF seeking payment for what she considered copyright infringement. In an effort to protect Mr. Warhol's legacy and creative secondary works, the AWF filed suit against Ms. Goldsmith.

Procedural History

In 2017, the AWF sued Ms. Goldsmith for a declaratory judgment of non-infringement, asking the court to find the "Prince Series" protected under fair use. Ms. Goldsmith countersued for copyright infringement under 17 U.S.C. § 106.

District Court²

In 2019, the district court granted summary judgment to the AWF, finding the “Prince Series” transformative and entitled to protection under fair use. This it found in part because “[the series] [had] a different character, [gave] Goldsmith’s photograph a new expression, and employ[ed] new aesthetics with creative and communicative results distinct from Goldsmith’s.” The court examined the works side by side and found the “Prince Series” may reasonably be perceived “to have transformed Prince from a vulnerable, uncomfortable person to an iconic, larger-than-life figure.” It also vacated Ms. Goldsmith’s claim.

Second Circuit Court of Appeals³

In 2021, the Second Circuit Court of Appeals reversed the district court’s granting of the AWF’s motion for summary judgment, vacated the district court’s dismissal of Ms. Goldsmith’s claim, and remanded to the district court for further proceedings consistent with its opinion. In formulating its decision, the Second Circuit did two notable things:

1. It refused to examine the intent or message of a secondary work in deciding if it had a further

² Procedural history for the District Court is found in *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 382 F.Supp.3d 312 (S.D.N.Y. 2019).

³ Procedural history for the Second Circuit Court of Appeals is found in *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 11 F.4th 26 (2d Cir. 2021).

purpose or different character, holding that it is not a judge's job to "ascertain the intent behind or meaning of the works at issue," and

2. It dispensed with examining a secondary work's meaning or message and instead held that a transformative work must not be "recognizably deriving from, and retaining essential elements of, its source material."

The court held that because Mr. Warhol did not "significantly" add to or alter the essential elements of Goldsmith's photograph, the "Prince Series" could not be considered transformative as a matter of law. This appeal then followed.

SUMMARY OF ARGUMENT

It is Congress' job to promote the arts and sciences. U.S. CONST. art. I, § 8, cl. 8. They did so in their passing of 17 U.S.C. § 107. Their purpose behind passing § 107 was to leave it up to the courts to continue the fair use adjudication process they had been doing for well over a century. This process included examining a secondary work and the original it was based on and deciding if it was transformative or not. As this Court articulated in *Campbell*, the “north star” for circuit courts, a new work is transformative when it “adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message.” 510 U.S. at 579; *Dr. Seuss Enters., L.P. v. ComicMix LLC*, 983 F.3d 443, 453 (9th Cir. 2020). Most new works can add something new, but the real struggle is in creating a whole new work that has further purpose or different character.

Part of the adjudication process is to decide if a secondary work's further purpose or different character may reasonably be perceived. This Court established a reasonable objective standard in *Campbell* when it held “the threshold question when fair use is raised in defense of parody is whether a parodic character may reasonably be perceived.” 510 U.S. at 582. If a secondary work passes this threshold, then it is transformative. Warhol's “Prince Series” does because anyone may reasonably perceive a further purpose or different character by viewing the “Prince Series” and the Goldsmith Photograph side-

by-side. The Second Circuit decided to change the standard that has existed for well over a century.

The Second Circuit incorrectly held that a new work is not transformative when it recognizably derives from and retains essential elements of an original work. It failed to consider the fact that all commentary and criticism, by virtue of their very nature, need to recognizably derive from and retain essential elements of an original in order to effectively comment on or criticize. Take parody as an example of criticism. If a parodic work is so different from the original it is criticizing, no one would be able to tell what it was criticizing, and the point would be lost. So it is with Warhol's works.

Warhol is famous for taking the ordinary and turning it into something extraordinary, commenting on consumerism and celebrity culture while doing it. The "Prince Series" is no exception. Just like his painting of the Campbell's Tomato Soup Can and his prints of Marilyn Monroe, the "Prince Series" takes the original and transforms it into a whole new work that is essentially a form of expression Warhol engages in. His art might as well be his voice.

Just like the freedom of speech is broad and allows citizens to speak freely, so does the transformative doctrine allow artists to freely express themselves. To narrow the transformative standard would be akin to restricting one's freedom to speak. It would inhibit creativity and stop people from commenting on works already in existence.

The Second Circuit incorrectly interpreted this Court's hesitation in playing art critic. This Court

held in *Campbell* that a judge should not decide whether a new work was in good taste or bad taste, but instead should just look at the intent and meaning of a new work in deciding if it had a further purpose or different character. The Second Circuit interpreted this to mean that they could never ascertain the intent or meaning of a new work and instead should just decide if a new work has a further purpose or different character. It failed to consider what most courts do, that a secondary work has a further purpose or different character when it has a new expression, meaning, or message. Works that add new aesthetics typically have new purpose. It is for these reasons that Warhol's "Prince Series" is transformative.

ARGUMENT

- I. Congress intended a broad application of the transformative standard and the language in § 107 and this Court's interpretation in *Campbell* support that.**
- A. Congress intended § 107 "to restate the present judicial doctrine of fair use, not to change, narrow, or enlarge it."**

Congress' legislative intent behind 17 U.S.C. § 107 shows the origins of the transformative test. Up until 1976, the fair use doctrine was a common-law adjudication process, meaning it was up to the courts to decide, case-by-case, whether an infringing use was fair. In passing § 107 in 1976, Congress only intended to "restate the present judicial doctrine of fair use, not to change, narrow, or enlarge it in any way and

intended that courts continue the common-law tradition of fair use adjudication.” *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569, 576 (1994). So, to understand what the transformative standard is, the common-law tradition that existed prior to the passing of § 107 must first be examined.

The common-law tradition of fair use adjudication is best articulated by Justice Story in *Folsom v. Marsh*, 9 F. Cas. 342 (C.C.D. Mass. 1841). The language Justice Story used was adopted by both Congress in § 107 and this Court in *Campbell*. In examining whether a publisher pirated the plaintiff’s copyright in letters written by George Washington, Justice Story said:

[W]e must often, in deciding questions of this sort, look to the *nature and objects* of the selections made, the quantity and value of the materials used, and the degree in which the use may prejudice the sale, or diminish the profits, or supersede the objects, of the original work.

Id. at 348. Historically, fair-use adjudication concerned itself with whether a new work was created. In the case of *Folsom v. Marsh*, the court found there was no new work and that piracy had occurred because the copy was essentially “the facile use of scissors,” extracting the essential parts and value of the original. *Id.* at 345. Over a century later, Judge Leval of the United States District Court for the Southern District of New York authored an article

that summarized the common law adjudication process for fair use. Most notably he said:

A quotation of copyrighted material that merely repackages or republishes the original is unlikely to pass the [transformative] test; in Justice Story's words, it would merely “supersede the objects” of the original. If, on the other hand, the secondary use adds value to the original—if the quoted matter is used as raw material, transformed in the creation of new information, new aesthetics, new insights and understandings—this is the very type of activity that the fair use doctrine intends to protect for the enrichment of society.

Pierre N. Leval, *Toward A Fair Use Standard*, 103 Harv. L. Rev. 1105, 1111 (1990). The threshold question behind a fair use analysis, historically speaking, is whether the new work uses elements of the original in such a way that a new work is created. The common sentiment at the time Leval’s article was published was that elements of an original work could be visible within a new work and still be considered transformative. Justices of this Court expressed that sentiment in a 1984 dissenting opinion.

Justices of this Court recognized back in 1984 the need for a broad transformative standard. In the dissenting opinion of *Sony Corp. of Am. v. Universal*

*City Studios, Inc.*⁴, Justices Blackmun, Marshall, Powell, and Rehnquist said:

The monopoly created by copyright thus rewards the individual author in order to benefit the public ... There are situations, nevertheless, in which strict enforcement of this monopoly would inhibit the very “Progress of Science and useful Arts” that copyright is intended to promote. An obvious example is the researcher or scholar whose own work depends on the ability to refer to and to quote the work of prior scholars. Obviously, no author could create a new work if he were first required to repeat the research of every author who had gone before him.

Sony Corp. of Am. v. Universal City Studios, Inc., 464 U.S. 417, 477 (1984). While Warhol’s use of Goldsmith’s photograph to criticize U.S. commercialism is not the exact same as this scenario, it was just as necessary for Warhol to use the photograph as a base as it was for the researcher to quote from and refer to the work of prior scholars. This is because Warhol could not comment on or criticize celebrity culture without the use of the Goldsmith photograph; at least not in the same way as he artistically sought to do.

⁴ While a dissenting opinion, the expressed sentiment had nothing to do with the overall ruling of the case.

This Court should reaffirm the broad transformative standard that has been commonplace in American jurisprudence because to do so would be the best way this Court could both protect copyright and foster artistic expression and creation. Providing a statutory monopoly for artists and creators promotes creation, but that monopoly should not be absolute. Nor is it according to the transformative standard. But since there is statutory protection in place for those with copyrights, people can be assured their creations will be protected. Because creatives find inspiration in existing work, it makes sense to allow them to create based on that existing work. Freedom of creation is akin to First Amendment freedom of speech. One purpose of the freedom of speech is to allow people to express opinions freely so those ideas can be discussed and broken down. The best ideas survive, while the worst are left behind. Without that freedom to express ideas, some of the best ideas in history might never have come to be. So is it with art. Allowing artists to freely create promotes the creation of ideas. This Court should not stifle creation by installing a never-before-seen strict standard to the transformative doctrine. Rather this Court should continue on the path it has been on for over a century and reaffirm the low bar to the transformative standard as expressed by Congress, many legal scholars, and this Court.

B. A new work is transformative when it “adds something new, with a further purpose or different character, altering

the first with new expression, meaning, or message.”

After over a century of fair use adjudication, this Court saw the need to explain the transformative standard and how it applied to parody specifically. In *Campbell*, this Court held that a new work is transformative when it “adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message.” 510 U.S. at 579. This “new” standard was essentially a restatement of the already existing understanding of the transformative standard. But it was an important clarification as it has since become the “north star” of transformative analyses. *Dr. Seuss*, 983 F.3d at 453. However, there has been some confusion among the courts, particularly the Second Circuit, on what exactly this “new” standard means and what its limits are.

The limits of this standard are few. As expressed earlier, neither Congress nor this Court ever intended § 107 or the transformative standard to be strict. However, the Second Circuit in this case held that Warhol’s “Prince Series” was not transformative because it “retains the essential elements of the Goldsmith Photograph without *significantly* adding to or altering those elements.” *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 11 F.4th 26, 43 (2d Cir. 2021) (emphasis added). Nowhere in § 107, common law tradition, or *Campbell v. Acuff-Rose* does anyone require a secondary work to significantly add to or alter an original work to be considered transformative. In fact,

the parodic work of 2 Live Crew, which was found by this Court to be transformative, did not significantly add to or alter Roy Orbison's original "Pretty Woman." See *Campbell*, 510 U.S. at 579. Rather, it maintained essential elements, using them in a way that created a new work with a further purpose or different character.⁵ Even if the additions were significant, this Court never held that significant alterations or additions were necessary. Furthermore, works that comment on or criticize an original necessarily need to maintain essential elements of the original to properly comment on or criticize it. To be fair, while a secondary work can maintain essential elements of an original, it does need to add a further purpose or different character, altering the original with new expression, meaning, or message.

One way a secondary work that comments on or criticizes an original can satisfy the transformative standard is to have its commentary or criticism have "critical bearing" on the substance or style of the original. *Campbell*, 510 U.S. at 580. It cannot merely add something new. This Court held that if an alleged infringer merely uses the substance or style of an original work to get attention or avoid the drudgery of creating something fresh, their claim to fair use diminishes. *Id.* The Ninth Circuit discussed this

⁵ Both songs employed the use of the phrase "Pretty woman", which was an essential element of the song, but 2 Live Crew's parodic version added new words and phrases that changed the purpose and character of the song. The additions were, arguably, not significant.

limitation in *Dr. Seuss Enters., L.P. v. ComicMix, LLC*, 983 F.3d 443 (9th Cir. 2020). It held that a secondary book that copied the style and substance of Dr. Seuss' beloved children's books was not for a transformative purpose, but only for avoiding the work that goes along with creating something new. *Id.* at 454. While proponents of the new work tried to argue that the work was commentary or parody, their arguments fell short because it did not actually comment on or criticize the substance or style of the original. *Id.* at 452. The new book replaced the illustrations of the original Dr. Seuss book with Star Trek characters but kept everything else the same.⁶

While the new work in *Dr. Seuss* added something new, it did not change the purpose or character of the book partly because it did not alter the original with new expression, meaning, or message. *Id.* at 454. The purposes were the same. *Id.* The original book and the secondary book both intended to share the message that "time [is] moving fast in the wink of an eye." *Id.* A new work that is commenting on or criticizing an original, merely has to actually comment on or criticize the original. That proves difficult to determine when the works in question are paintings and photographs and no words are used. However, this Court created a reasonable, objective standard for ascertaining art's further purpose or different character in *Campbell*, a standard the Second Circuit all but ignored in this case. The reasonable, objective standard will be

⁶ The artist "painstakingly attempted to make the illustration in [the new book] nearly identical to [the original]." *Id.* at. 450.

discussed more in depth in Section II.B. of this brief, but essentially the standard is that if a work's further purpose or different character could reasonably be perceived, it is transformative. *Campbell*, 510 U.S. at 582.

Another shortcoming of the Second Circuit's analysis was to incorrectly ignore the meaning and message of Warhol's "Prince Series" in deciding if it was transformative or not. Courts are required to examine the meaning and message behind a secondary work as it speaks directly to whether a secondary work has a further purpose or different character. This Court views the phrases "further purpose or different character" and "altering the original with new expression, meaning, or message" too synonymously for the Second Circuit to outright ignore Warhol's "Prince Series" new meaning or message. This Court held in *Campbell* that "the [transformative] enquiry focuses on whether the new work merely supersedes the objects of the original creation, or whether and to what extent it is transformative, altering the first with new expression, meaning, or message." 510 U.S. at 579. While this Court puts a lot of weight into the new meaning or message a secondary work has in deciding whether a secondary work has a further purpose or different character, the Second Circuit does not. The Second Circuit held that:

[I]n conducting this [transformative] enquiry, however, the district judge should not assume the role of art critic and seek to ascertain the intent behind

or meaning of the works at issue ... Instead, the judge must examine whether the secondary work's use of its source material is in service of a fundamentally different and new artistic purpose and character, such that the secondary work stands apart from the "raw material" used to create it.

Andy Warhol, 11 F.4th at 41. While this Court views "further purpose or different character" synonymously with "altering the original with new expression, meaning, or message," the Second Circuit refuses to examine the meaning behind a new work where, in its opinion, it is so obvious there is no further purpose or different character. *Id.* Where there is such a clear divide between the Supreme Court and the Second Circuit, the Supreme Court wins. The view this Court holds is only enforced when looking at other circuits.

In the Ninth Circuit, the court held that an infringing use of a piece of art within a Green Day music video was fair use because "an allegedly infringing work is typically viewed as transformative as long as new expressive content or message is apparent." *Seltzer v. Green Day, Inc.*, 725 F.3d 1170, 1177 (9th Cir. 2013). Other than a recitation of the transformative standard, the court never even mentioned "purpose or character" and instead focused on whether the original work had sufficiently been altered. *Id.* Additionally, the Ninth Circuit held that a work was transformative when it had new meaning or message even when its additions or changes were

minimal. *See Id.* This not only enforces the low bar to transformative as found in *Campbell*, but it shows that a work can have a further purpose or different character when it slightly alters an original work with new expression, meaning, or message; As opposed to what the Second Circuit held, that a new work needs to significantly alter.

- II. Courts use an objective standard when judging a secondary work's "further purpose or different character."**
- A. If a secondary work's "further purpose or different character" may reasonably be perceived, it is transformative.**

Andy Warhol's "Prince Series" is transformative because its further purpose or different character may reasonably be perceived. This Court set a low threshold for judging a new work's "further purpose or different character" in *Campbell* when it held that "[t]he threshold question when fair use is raised in defense of parody is whether a *parodic character may reasonably be perceived*." 510 U.S. at 582 (emphasis added). The words, "parodic character," means a work's "further purpose or different character." The word "may" sets a lower bar than words like "can," "must," or "should." And "reasonably be perceived" sets an objective standard that a court must use when performing a transformative analysis.

Parodic Character

"Further purpose or different character," "parodic character," and "nature." In *Campbell*, this

Court used these phrases interchangeably in reference to the same thing: the “why” and the “what” of 2 Live Crew’s secondary work. Throughout its transformative analysis, this Court said the following:

- “[W]hether the new work merely “supersede[s] the objects” of the original creation, or instead adds something new, with a **further purpose or different character**, altering the first with new expression, meaning, or message.” *Id.* at 579 (emphasis added).
- “The threshold question when fair use is raised in defense of parody is whether a **parodic character** may reasonably be perceived,” *Id.* at 582 (emphasis added).
- “[I]nsufficient consideration was given to the **nature** of parody in weighing the degree of copying,” *Id.* at 572 (emphasis added) (criticizing the lower court’s ruling).

Consistently throughout *Campbell*, this Court held that the “why” and the “what” of a secondary work must be different enough from an original work, must reasonably be perceived as such, and must be given proper consideration. As noted earlier in this brief, this Court views the phrase “altering the first with new expression, meaning, or message” as informing the phrase “further purpose or different character.” It is both the nature of the work and its new expression, meaning, or message that must be given proper consideration.

Works that comment on or criticize an original work are generally transformative as commentary and criticism serve to create a further purpose or different character. This Court held in *Campbell*, “that parody, like other comment or criticism, may claim fair use under § 107.” *Id.* at 579. Commentary and criticism are some of the only enumerated examples of a proper “further purpose or different character” in § 107: “...for purposes such as criticism, comment, news reporting, teaching..., scholarship, or research.” 17 U.S.C. § 107. But, as discussed earlier, a commentary or criticism must have actual critical bearing on the style or substance of the original.

May

This Court using the word “may” is notable as it creates a low threshold the court must cross when determining if a new work has a further purpose or different character. Merriam Webster’s Dictionary defines “may” as “used to indicate possibility or probability.”⁷ It is a lower threshold to cross as opposed to words like “can,” “must,” or “should.” This is especially important with visual mediums when no words are actually expressed within the artwork to show what the further purpose or different character are. It essentially is left up to the judge to determine if a further purpose or different character may reasonably be perceived. As the District Court correctly held, citing *Cariou*, if you can look at two

⁷ <https://www.merriam-webster.com/dictionary/may#:~:text=1%20of%203-,auxiliary%20verb,sometimes%20used%20interchangeably%20with%20can>

pieces of art side by side and perceive a further purpose or different character, of course looking at the meaning or message as well, it is a transformative piece as a matter of law. *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 382 F. Supp.3d 312 (S.D.N.Y. 2019).

Reasonably be Perceived

The objective standard this Court established in *Campbell* requires judges to use all evidence in the record and their own perception to determine if a secondary work has a further purpose or different character, including if the secondary work has a new expression, meaning, or message. In *Google LLC v. Oracle Am., Inc.*, this Court held that Google's use of Sun Java API's code was for a fundamentally further purpose or different character, and it relied primarily on the record to do so. 141 S.Ct. 1183, 1204 (2021). It said things such as "[t]he jury heard ...," and "[t]he record here demonstrates" *Id.* at 1203. This Court used the record to hold that "Google, through Android, provided a new collection of tasks operating in a distinct and different computing environment." *Id.*

In this case, Warhol's "Prince Series" has a further purpose or different character from Goldsmith's photograph because its criticism of celebrity culture has a critical bearing on the original's substance. What is important to remember is an artist's stated intent or message is not necessary for a court to examine when doing a transformative analysis. This is because some artists are long gone and never stated what their intent or message behind

a piece is. This is why this objective test is so important. This Court reaffirmed this objective test in *Google* when it mentioned that “[a]n artistic painting might, for example, fall within the scope of fair use even though it precisely replicates a copyrighted advertising logo to make a comment about consumerism.” *Id.* The Court does not need to have the artist actually state that as their intent or message for it to determine that is a reasonable perception. This Court, of course was referring specifically to another one of Andy Warhol’s beloved art pieces: “Campbell’s Soup Cans.” *Id.*

Google is not the only case to recognize Andy Warhol’s works as reasonably being perceived as having a further purpose or different character. The Second Circuit themselves admitted in *Cariou v. Prince* that “[m]uch of Andy Warhol’s work, including work incorporating appropriated images of Campbell’s soup cans or of Marilyn Monroe, comments on consumer culture and explores the relationship between celebrity culture and advertising.” 714 F.3d 694, 706 (2d Cir. 2013). If this message or purpose may reasonably be perceived in Warhol’s Prince Series,” then the Second Circuit must admit that the series is transformative as a matter of law.

Courts do not even need to necessarily ascertain the intent or meaning behind a secondary work to decide if it is for a fundamentally new purpose than its original counterpart. The First Circuit in *Monsarrat v. Newman* held that Newman’s posting of Monsarrat’s copyrighted social media post on a new

platform was for a “fundamentally different reason than that which led to its creation.” 28 F.4th 314, 321 (1st Cir. 2022). The original post was made by Monsarrat to threaten other social media users to remove any posts they had made about Monsarrat. *Id.* at 317. The court held that Newman’s subsequent reposting could clearly not be for the same purpose as Monsarrat’s. *Id.* at 321. Monsarrat’s was to stop people from posting about him and Newman’s was clearly different. *Id.* The court did not go as far to determine what Newman’s was. *Id.*

In our case, Warhol’s purpose behind the “Prince Series” is so different from Goldsmith’s photograph that this Court might not even need to ascertain its meaning or message should it choose not to. It can merely look at what the purpose is of Goldsmith’s Photograph and decide if it clearly is not the same purpose as Warhol’s “Prince Series.” The Goldsmith Photograph is just that, a photograph. Photographs are meant to depict things and people as they exist. Goldsmith would also license this photograph to magazines and other mediums so they also could depict Prince as he existed. Warhol’s “Prince Series” is not a photograph, but it does have a similar purpose. To portray Prince. However, it is not to portray Prince as he existed. Looking at Warhol’s Prince Series, it is clear that it is a different portrayal of Prince from the Goldsmith Photograph. Warhol’s portrayal is in no way depicting real life.

Additionally, with Andy Warhol’s “Prince Series,” any reasonable judge may perceive its further purpose or different character. Like Warhol’s

paintings of Marilyn Monroe, as discussed in *Google* and *Cariou*, the “Prince Series” comments on the relationship between celebrity culture and advertising. This is a further purpose or different character than Goldsmith’s photograph, which was merely a photo of Prince attempting to portray his likeness. The photographer’s stated intent is not even necessary to examine, but if it is then it only further solidifies Warhol’s further purpose or different character. Goldsmith stated that she was attempting to portray Prince as a vulnerable human being and someone in touch with the feminine part of himself. *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 382 F. Supp.3d 312, 318 (S.D.N.Y. 2019). Warhol’s “Prince Series,” similar to how the Marilyn Monroe Series portray Marilyn Monroe, portrays Prince as a larger-than-life icon, completely different than the photograph on which it was based. If Warhol’s can of soup painting is transformative, then surely the “Prince Series” is as well considering the new aesthetics it adds.

The “Prince Series” adds new aesthetics that change the meaning and message of the Goldsmith Photograph, creating a further purpose or different character. As Judge Leval said,

[I]f the quoted matter is used as raw material, transformed in the creation of new information, *new aesthetics*, new insights and understandings— this is the very type of activity that the fair use doctrine intends to protect for the enrichment of society.

Pierre N. Leval, *Toward A Fair Use Standard*, 103 Harv. L. Rev. 1105, 1111 (1990). New aesthetics in a secondary work create an entirely new work, especially when that further purpose or different character may reasonably be perceived. The “Prince Series” adds new colors, shapes, and lines that all change the aesthetic nature of the Goldsmith Photograph. This alone is enough to create a whole new work. It is the court’s duty to examine a work’s new aesthetics and determine if a further purpose or different character may reasonably be perceived. A judge is not playing art critic when they do that. While the Second Circuit’s fear of playing art critic is well founded, it misinterprets what exactly that means.

B. In reasonably perceiving creative works’ purpose or character, it is dangerous for a court to judge only its worth, not its intent or meaning.

The Second Circuit confuses this Court’s concern about judges playing art critic. This Court held that “it would be a dangerous undertaking for [judges] to constitute themselves final judges of the *worth* of [a work], outside of the narrowest and most obvious limits.” *Andy Warhol Found. for Visual Arts, Inc. v. Goldsmith*, 11 F.4th 26, 43 (2d Cir. 2021) (emphasis added). Judging the worth of a particular work is different from ascertaining the intent behind it or its meaning. In fact, many courts look at a work’s meaning or message in deciding if it has a further purpose or different character.

The Ninth Circuit routinely examines a work's meaning when judging a work's further purpose or different character. The Ninth Circuit in *Dr. Seuss* listed the factors it considers in a transformative analysis. It looks at:

(1) further purpose or different character in the defendant's work, i.e. the creation of new information, new aesthetic, new insights and understanding; (2) new expression, *meaning*, or message in the original work, i.e. the addition of value to the original; and (3) the use of quoted matter as raw material, instead of repackaging it and merely superseding the objects of the original creation."

983 F.3d at 453 (emphasis added). Nowhere does the Ninth Circuit say they do not judge the intent or meaning of a work to avoid being an art critic. In fact, that is an integral part of the analysis. In *Dr. Seuss*, the court held that the secondary book did not have a further purpose or different character because it propounded the same message as the original book. *Id.* While the two works had different characters, the text and the overall style were the same. *Id.* As discussed earlier, the Ninth Circuit in *Green Day* found a new work transformative because "an allegedly infringing work is typically viewed as transformative as long as new expressive content or message is apparent." 725 F.3d at 1177. This is because new content or message speaks to whether a new work has a further purpose or different character.

The First Circuit also examines a new work's meaning or message in ascertaining its transformative status. In *Nunez v. Caribbean Int'l News Corp.*, the First Circuit held that a journalist's use of copyrighted photos in an article was transformative because the photos in conjunction with editorial commentary gave the work a further purpose and a new meaning or message. 235 F.3d 18, 23 (1st Cir. 2000). In doing this, the court felt the journalist had superseded the objects of the original and created a whole new work. *Id.*

When this Court expressed its concern with a judge playing art critic in *Campbell*, it did so in the context of the court judging the worth of a work. The full quote is important here as the Second Circuit seems to focus on only a small portion of it, while ignoring the rest. This Court said:

The threshold question when fair use is raised in defense of parody is whether a parodic character may reasonably be perceived. Whether going beyond that, parody is in good taste or bad does not and should not matter to fair use.

Campbell, 510 U.S. at 582. This is what this Court meant when it said a judge should be wary of playing art critic. That a judge should not say whether a work was in good taste or bad. The Second Circuit refused to consider the meaning or message and intent behind a secondary work because, as it said, a "judge should not assume the role of art critic and seek to ascertain the intent behind or the meaning of the works at

issue.” *Andy Warhol Found. for the Visual Arts, Inc. v. Goldsmith*, 11 F.4th 26, 43 (2d Cir. 2021) The problem here, besides the Second Circuit misinterpreting this Court, is that the Second Circuit then used this as a justification to say that

[A] secondary work’s transformative purpose and character must, at a bare minimum, comprise something more than the imposition of another artist’s style on the primary work such that the secondary work remains both recognizably deriving from, and retaining the essential elements of, its source material.

Id. at 42. Unfortunately for the Second Circuit, “recognizably deriving from” and “retaining essential elements” are both necessary things for commentary and critiques to do. Especially with parody. If secondary works did not recognizably derive from and retain essential elements, it would be near impossible for the secondary work to comment on or critique the original. The question behind the transformative analysis is whether a new work was created. In the case of Warhol’s “Prince Series,” it was.

In this case, Warhol’s “Prince Series” is a new work that does recognizably derive from and maintain essential elements of Goldsmith’s Photograph, but that is permissible under this Court’s articulation of the transformative test. The “Prince Series” adds something new. It adds new colors, shapes, lines, and aesthetics. It also contains a further purpose or

different character as it alters the original with new expression, meaning, or message. As discussed, many courts find that a new work has a further purpose or different character when it alters with new expression, meaning, or message. If a new message may reasonably be perceived, it is transformative. Here a new message of critique on consumer and celebrity culture may reasonably be perceived. It does not matter that Warhol never stated what message he intended to convey. It only matters that a new message may reasonably be perceived. Comparing the Goldsmith Photograph side-by-side with the “Prince Series” it is clear that there are two fundamentally different purposes for the two works. One is to portray Prince as he actually exists, a man and celebrity; and the other is to portray him as a larger-than-life icon. And critique on our culture’s obsession with celebrities may reasonably be perceived.

CONCLUSION

Warhol's "Prince Series" is transformative as a matter of law because it takes Goldsmith's Photograph and "adds something new, with a further purpose or different character, altering the original with new expression, meaning, or message." The fact that the new work does not significantly alter the original does not matter. Warhol's "Prince Series" is a commentary on the world of celebrity culture and any judge may reasonably perceive that further purpose or different character. It is for these reasons this Court should overturn the Second Circuit's holding and find that Warhol's "Prince Series" is transformative.⁸

⁸ Word Count is 7196.

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CERTIFICATE OF SERVICE

Rex E. Lee Moot Court Competition 2022-2023

I, Exam No. 256, certify that I have submitted a hard copy of the brief to the library circulation desk for Professor John Nielsen and an electronic copy to the Rex E. Lee Competition Chair. I also certify that I have complied with the letter and spirit of the Competition Rules.

Signature: _____

Printed Name: _____

Confidential Number: 256

Petitioner / Respondent (highlight one)

Applicant Details

First Name **Chandana**
 Last Name **Pandurangi**
 Citizenship Status **U. S. Citizen**
 Email Address pandurac@bc.edu
 Address

Address
Street
11 Camelot Court, 2A
City
Brighton
State/Territory
Massachusetts
Zip
02135
Country
United States

Contact Phone Number **6098655440**

Applicant Education

BA/BS From **Case Western Reserve University**
 Date of BA/BS **May 2019**
 JD/LLB From **Boston College Law School**
http://www.nalplawsonline.org/ndlsdir_search_results.asp?lscd=12201&yr=2011
 Date of JD/LLB **May 21, 2024**
 Class Rank **50%**
 Does the law school have a Law Review/Journal? **Yes**
 Law Review/Journal **No**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Grimes Moot Court**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **No**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Jeffrey, Cohen
jeffrey.cohen.4@bc.edu
Williams, Ryan
Willibit@bc.edu
Noble, Alice
alice.noble@bc.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

CHANDANA PANDURANGI

• 11 Camelot Court, Brighton, MA 02135 • pandurac@bc.edu • 609-865-5440 •

August 2, 2023

The Honorable Kimberly Swank
United States District Court, Eastern District of North Carolina
United States Courthouse
201 South Evans St., Rm 209
Greenville, NC 27858

Dear Judge Swank:

I am a rising third-year law student at Boston College Law School, and I am writing to apply for a clerkship with your chambers for the 2024-2025 term. My strong research and writing skills and exposure to a wide variety of issues within federal and administrative law make me an ideal candidate for a clerkship. I am especially interested in your chambers because of your experiences in habeas litigation.

During my time at Boston College Law School, I have gained significant experience in various types of legal writing. While I was a judicial intern with The Honorable Marianne Bowler at the District of Massachusetts, I drafted opinions analyzing legal issues presented to the Court and observed numerous meditations on criminal, personal injury, and intellectual property matters. While externing with Kate Farms, a company focused on providing plant-based nutrition options to patients in acute care settings, I edited contracts to protect Kate Farms in a landscape of changing data privacy rights. At school, I have further honed my advocacy skills in Boston College's Grimes Moot Court Competition.

My professional experiences have equipped me with a strong foundation in federal law. This summer, I will be splitting my time between the Environmental Protection Agency and the United States Patent and Trademark office. While at the EPA, I have deepened my understanding of administrative law and contributed to ongoing arguments within the First Circuit. Currently at the USPTO, I am researching case law for potential policy proposals and reviewing patent applications with patent examiners. Previously at the New Jersey Attorney General's office, I explored the conflicts between federal and state health insurance law, and statutory schemes.

Enclosed within this application are my resume, law school transcript, and writing samples. Additionally you will be receiving letters of recommendations from Professors Ryan Williams, Jeffrey Cohen and Alice Noble, who are all happy to speak with you directly. Thank you for your time and consideration. I look forward to hearing from you.

Respectfully,

Chandana Pandurangi

CHANDANA PANDURANGI

• 11 Camelot Court, Brighton MA 02135 • pandurac@bc.edu • 609-865-5440 •

EDUCATION

Boston College Law School Newton, MA
Candidate for Juris Doctor May 2024

GPA: 3.41/4.0

Activities: Grimes Moot Court Competition; Intellectual Property and Technology Forum, *Staff Writer for the IPTF Journal*; South Asian Law Students Association, *Treasurer and Secretary*; Public Interest Law Foundation, *Director of Public Interest Celebration*

Case Western Reserve University Cleveland, OH
Bachelor of Science, Chemistry; Minors in Biology and Public Policy May 2019

Honors: Costin D. Nenitzescu and Margareta Avram Award for Outstanding Research

Senior Thesis: *Synthesis of Brominated Carbenes with Fluorescent Applications*

EXPERIENCE

United States Patent and Trademark Office Alexandria, VA
Legal Intern at the Office of Patent and Legal Administration July 2023 – August 2023

- Anticipated duties include updating Manual of Patent Examining Procedure, observing Patent Trial and Appeal Board and Inter Partes Review Proceedings and assisting in legal redetermination.

Environmental Protection Agency Boston, MA
Legal Intern May 2023 – July 2023

- Wrote Motions to Terminate Consent Decrees against violating organizations.
- Researched legal arguments in anticipation of ongoing litigation and oral arguments.
- Will work on Clean Water, Air, and Toxic Substances Control regulatory matters.

Kate Farms Boston, MA
Legal Extern January 2023 – May 2023

- Edited contracts between Kate Farms and outside entities for data privacy and IP concerns.
- Researched regulatory issues applicable to Kate Farms to update compliance measures.

United States District Court for the District of Massachusetts Boston, MA
Legal Extern, Hon. Judge Marianne Bowler, U.S.M.J. August 2022 – December 2022

- Observed court proceedings, mediations and arbitrations.
- Drafted Motions to Dismiss for criminal matters.

New Jersey Attorney General's Office, Division of Law Newark, NJ
Legal Intern in the Government and Healthcare Fraud Section May 2022 – August 2022

- Researched legal issues regarding False Claims Act in insurance and healthcare providers.
- Conducted document review summaries and edited legal documents.
- Drafted memoranda involving public funds and environmental fraud.

Paul, Weiss, Rifkind, Wharton, and Garrison LLP New York, NY
Patent Litigation Paralegal August 2019 – July 2021

- Assisted attorneys with factual research, organizing, and producing legal documents for hearings, depositions, trials and other meetings.
- Involved with the pro bono and patent groups in matters regarding patent litigation, contract disputes, COVID-19 response involving at-risk groups and judicial appointments.

INTERESTS

Reading Fiction. Visiting National Parks. Makeup Artist and Skincare Enthusiast. Reality TV Fan. Board Game Lover. Amateur Chef.



BOSTON COLLEGE | LAW

Unofficial Grade Sheet

Date Prepared: 6/09/2023

Address: 11 Camelot Court, 2A

Student Name: Chandana Pandurangi

City, State, Zip, Phone Number:

Anticipated Graduation: Spring 2024

Brighton, MA, 02135, 609-865-5440

Cumulative GPA: 3.41

Email: pandurac@bc.edu

Spring Semester 2023

Course Title	Instructor	Credits	Grade
Professional Responsibility	Stacey Best	2	A-
Evidence	Jeffrey Cohen	3	A-
Intellectual Property Survey	Alfred Yen	3	A-
Legal Practice Externship and In-House Seminar	Janelle Peiczarka	5	P

Fall Semester 2022

Course Title	Instructor	Credits	Grade
Federal Courts	Ryan Williams	3	A-
Health Law	Alice Noble	3	A
Energy Law	Dennis Duffy & John Moskal	2	B
Legal Practice Externship and Judicial Process Seminar	Erin Macgowan	5	P

Spring Semester 2022

Course Title	Instructor	Credits	Grade
Property	Daniel Lyons	4	A-

**This grade sheet has been self-prepared by the above-named student. The student will bring a copy of an "Unofficial Transcript" at the time of an interview or forward one at the request of an employer.*



BOSTON COLLEGE | LAW

Unofficial Grade Sheet

Constitutional Law	Ryan Williams	4	B+
Criminal Law	Steven Koh	4	B+
Law Practice II	Jeffrey Cohen	2	B+
Intro to Appellate Judging	Andrew Grainger	3	A-

Fall Semester 2021

Course Title	Instructor	Credits	Grade
Contracts	Brian Quinn	4	B+
Civil Procedure	Linda Simard	4	B
Torts	Dean Hashimoto	4	B
Law Practice I	Jeffrey Cohen	3	B
Critical Perspectives in Law and Professional Identity	Paul Tremblay	1	P

**This grade sheet has been self-prepared by the above-named student. The student will bring a copy of an "Unofficial Transcript" at the time of an interview or forward one at the request of an employer.*

August 02, 2023

The Honorable Kimberly Swank
United States Courthouse Annex
215 South Evans Street
Greenville, NC 27858-1121

Re: Clerkship Candidacy of Chandana Pandurangi

Dear Judge Swank:

I am delighted to write to you to recommend Chandana Pandurangi for a clerkship in your chambers.

Chandana was a student in my Law Practice class during the 2021-22 academic year. Law Practice is a full-year required course in which all 1L students learn practical skills through simulation-based classroom exercises. Through this course, my students practice researching cases and statutes; crafting effective legal arguments; drafting objective office memoranda; and writing persuasive court documents, namely motions and memoranda of law. Law Practice requires a significant time commitment from 1L students, and they receive a lot of individual attention from me. In this context, I have come to learn that Chandana is a talented writer and a sophisticated thinker, and I have no doubt that she will be an exceptional clerk.

Chandana distinguished herself in the first few classes of the semester, during which she was noticeably attentive, insightful, and participatory without pretension. Our class moved quickly to cover a breadth of content, and Chandana was fully engaged. She consistently writes well-reasoned, polished work product, earning high marks on all of her assignments. Her research skills are also well-developed. During the term, she conducted wide-ranging research involving federal cases and statutes, state cases and statutes, and secondary sources. Her ability to find and grasp applicable authority and then synthesize that authority into well-reasoned arguments is excellent.

Chandana was also an incredibly curious and diligent student. She asked thoughtful questions both during and outside of class to confirm her understanding of key principles and strategies so that she could integrate them into her work. This highlights her genuine interest and fascination with the law—she truly strives to understand legal concepts in all of their intricacies, and is not looking for short-cuts or ways to gloss over complexity.

I also had Chandana in my Evidence class last semester. My Evidence class challenges students to analyze and effectively argue differing interpretations of the Federal Rules of Evidence and to understanding how the Rules relate to each other in creating a coordinated system to guide judicial discretion in conducting a trial. As a former Assistant United States Attorney, I place a high emphasis on a practical application of the Rules. Chandana was a strong student. She received an A-, which is a very difficult grade to receive. Chandana's classroom questions revealed to me that she has a strong grasp of the material. I appreciated most that she also wanted to understand the practical ramifications of the Rules on the parties and the jury.

Beyond Chandana's broad skills, she also has an incredibly genial personality. She is affable, good-natured and highly professional.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Jeffrey M. Cohen
Associate Professor
Boston College Law School

Cohen Jeffrey - jeffrey.cohen.4@bc.edu

August 02, 2023

The Honorable Kimberly Swank
United States Courthouse Annex
215 South Evans Street
Greenville, NC 27858-1121

Re: Clerkship Candidacy of Chandana Pandurangi

Dear Judge Swank:

I am writing on behalf of my student, Chandana Pandurangi, in support of her application for a position as a judicial clerk. Based on my experiences with Chandana, I have no hesitation extending to her my highest recommendation for a judicial clerkship position.

I first met Chandana in Spring 2022 when she was enrolled as a student in my first year Constitutional Law course. Like most first-year students, Chandana was relatively quiet during the first portion of the semester, participating only when called upon. Given the large size of the class, most students could expect to be called on only a handful of times over the course of a semester and it was a while before I reached Chandana on my call list. When I did finally call on her, I found her responses to be thoughtful, well-considered, and reflecting a clear understanding of the material. As the semester progressed, I noticed Chandana participating more in class discussions. Her contributions were consistently thoughtful, respectful, and well-informed.

Toward the end of the semester, Chandana approached me seeking advice about her course selection for the following semester. In particular, she expressed an interest in the Federal Courts class that I would be teaching in the Fall of 2022. She explained that she was very interested in the course and that she believed it would be useful to her future career and to her goal of pursuing a judicial clerkship following graduation. She was concerned, however, about the potential demands of the course and her ability to balance those demands with the rest of her class schedule during the Fall semester of her second year. I explained that the class would not be easy and that she should be prepared for the reading assignments to be extensive and challenging. I advised that she may want to consider delaying taking the course until her third year unless she was confident of her ability to handle the workload.

A short time later, Chandana informed me that she had considered the matter and did not want to put off taking the class. Given her initial reticence and her expressed concerns about balancing the course with her other commitments, I was impressed by both the confidence she displayed in her ability to handle the challenges the course would present and her determination in pursuing her goals.

As I promised her, the course was not easy. I explain to all my students at the outset of the class that the breadth and complexity of the subject matter require significant investments of time and effort on the part of all students. And at an early point in each semester, I can usually sense a large portion of the class wondering exactly what they have gotten themselves into.

Chandana was no exception. Although, as she had done in the first-year Constitutional Law class, Chandana remained consistently well-prepared for each class and an active participant in class discussions, she—like nearly all students who take the course—took some time getting comfortable with the complexities and contradictions that characterize the field. She was a frequent visitor to my office hours, posing thoughtful questions that allowed me to clarify points that had remained obscure from the readings and class discussion. These visits gave me an opportunity to get to know Chandana better and to see the effort she was putting in to make sure she understood not only the big-picture takeaways of each case and doctrine we studied but also the subtler distinctions and nuances that are necessary to fully grasp the relevant concepts. As the semester progressed, I could see her gaining greater confidence as her command of the subject matter increased. Nonetheless, as we neared the end of the semester, I could sense that she still had some reservations about her ability to display her knowledge on the exam.

As it turns out, her concerns were unfounded. Chandana performed excellently on the exam. Given the distribution of scores in the class and the requirements of our grading curve, I was only able to award two “A” grades for the entire course. But Chandana’s score fell just below the cutoff that would have merited that grade (she wound up receiving an “A-”). The only meaningful distinction between her exam and those that received the higher grade seemed to be the result of time pressure that prevented her from addressing the final question with the fullness that I’m confident she could have done had she been given just a bit more time. Her exam reflected an impressive grasp of the subject matter, and an ability to break down and analyze complex legal issues and to communicate her conclusions clearly and persuasively.

Shortly after receiving her grade, Chandana reached out to me asking to schedule some time to go over her exam answer. Although I could tell she was relieved by her score given her concerns going into the exam, she expressed a desire to learn what she could have done better and how she might be able to improve her test-taking strategies in future classes. I rarely receive such requests from students who perform as well in the class as Chandana did. But it was fully reflective of the diligence, commitment, and desire to improve that I’ve come to expect from her.

From conversations with Chandana outside of class, I know that she is very interested in pursuing a judicial clerkship opportunity and that she chose to take the Federal Courts course, in part, because it would help her to develop skills that she could use in a clerkship position. I have every confidence that Chandana will bring the same level of diligence, intelligence, attentiveness, and preparation to her clerkship as she has brought to the classroom experience. I have no doubt that she will make an excellent

Ryan Williams - Willibit@bc.edu

judicial clerk.

Should you have any further questions or if you wish to discuss any of the above information further, please do not hesitate to let me know.

Sincerely,

Ryan C. Williams

Ryan Williams - Willibit@bc.edu

August 02, 2023

The Honorable Kimberly Swank
United States Courthouse Annex
215 South Evans Street
Greenville, NC 27858-1121

Re: Clerkship Candidacy of Chandana Pandurangi

Dear Judge Swank:

I am delighted to write this letter in support of Chandana Pandurangi for a judicial clerkship. Ms. Pandurangi was a student in my Health Law course at Boston College Law School in 2022. Health Law is a survey course that is conducted as a seminar, where student participation is key to the course's success. Her course grade of A was derived from written submissions and class participation. The written assignments, unlike traditional law school exams, ask students to respond to a simulated client-based problem, like one they may be assigned in law practice. Students are expected to perform legal research and respond with an inter-office memo to a "supervisor", and in one case a blog post, based on rigorous analysis of legal authority. Ms. Pandurangi was a top performer among an impressive group of students. Also, she raised insightful questions during class, demonstrating attention to detail, quick thinking, and analytical skill.

Ms. Pandurangi stood out among her colleagues in both her written and oral communications. She often contributed to class discussion. Ms. Chandana's participation in moot court doubtless contributes to her assured, succinct, and organized presentation that manages to capture the key legal arguments as well as her classmate's attention. Her talent for legal analysis is also reflected in her writing ability. Her blog post and memos were well-written and to the point; her legal analysis and wording were clear and precise. She is able to steer the reader through the thicket of legal analysis both logically and persuasively. In short, Ms. Pandurangi has the requisite skill set to succeed as a judicial clerk.

Ms. Pandurangi has a desire to learn all she can about the law and legal practice. She is personally interested in a career in government service, and is continuing to gain relevant experience through a student clerkship and internships with federal agencies. Ms. Pandurangi fully appreciates the value of a clerkship to her development as a lawyer, and would make the most of the opportunity should she be selected. I highly recommend Chandana Pandurangi.

I am happy to provide further information concerning the candidate, and can most easily be reached at alice.noble@bc.edu.

Sincerely,

Alice A. Noble, J.D., M.P.H.
Adjunct Professor

Alice Noble - alice.noble@bc.edu

CHANDANA PANDURANGI

•pandurac@bc.edu • 609-865-5440•

The following writing sample is an excerpt of a Motion to Dismiss I wrote for the Honorable Judge Marianne Bowler. All names, locations and dates have been changed for confidentiality. Judge Bowler's legal clerk critiqued a previous draft.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Criminal No. XX-XXXXX-AAA

UNITED STATES OF AMERICA

v.

MARTIN SMITH

REPORT AND RECOMMENDATION RE:
DEFENDANTS' MOTION TO DISMISS INDICTMENT
(DOCKET ENTRY # 54)
MONTH DAY, YEAR

BOWLER, U.S.M.J.

Pending before this court is a motion to dismiss a Superseding Indictment (Docket Entry # 54) charging defendant Martin Smith ("defendant") with Sex Trafficking of a Minor by Force, Fraud and Coercion in violation of 18 U.S.C.S. § 1591, whereby defendant "solicit[ed] by any means Minor Jane Doe ["the victim"], a person known to the Grand Jury" to "engage in a commercial sex act" (Count One). (Docket Entry # 1).

Defendant submits that the Superseding Indictment: (1) fails to provide fair notice; and (2) will not allow the defendant to bar double jeopardy in the future if defendant is prosecuted for the same offense.

STANDARD OF REVIEW

Defendant moves to dismiss the Superseding Indictment pursuant to Fed.R.Crim.P. 12(b). “When a defendant seeks dismissal of an indictment, courts take the facts alleged in the indictment as true, mindful that the question is not whether the government has presented enough evidence to support the charge, but solely whether the allegations in the indictment are sufficient to apprise the defendant of the charged offense.” United States v. Ngige, 780 F.3d 497, 502 (1st Cir. 2015) (internal quotation marks omitted); United States v. Kilmartin, 99 F.Supp.3d 180, 184 (D.Me. 2015). An indictment will survive dismissal “if it specifies the elements of the offense charged, fairly apprises the defendant of the charge against which he must defend, and allows him to contest it without fear of double jeopardy.” United States v. Stewart, 744 F.3d 17, 21 (1st Cir. 2014). “At the indictment stage, the government need not ‘show,’ but merely must allege, the required elements.” Id. Courts therefore “routinely rebuff efforts to use a motion to dismiss as a way to test the sufficiency of the evidence behind the indictment’s allegations.” United States v. Ngige, 780 F.3d at 50 (quoting United States v. Guerrier, 669 F.3d 1, 4 (1st Cir. 2011)). As explained in Guerrier, “When grading an indictment’s sufficiency,” the court examines “whether the document sketches out the elements of the crime and the nature of the charge so that the defendant can prepare a defense and plead double jeopardy in any future prosecution for the same offense.” United States v. Guerrier, 669 F.3d at 3.

An “indictment may use the statutory language to describe the offense, but it must also be accompanied by such a statement of facts and circumstances as to inform the accused of the specific offense with which he is charged.” United States v. Savarese, 686 F.3d 1, 6 (1st Cir. 2012). Reliance on contested and disputed evidence outside an indictment when adjudicating a pre-trial motion to dismiss is not appropriate because it usurps the role of the grand jury and inevitably results in delay of the trial. See United States v. Gallant, 2010 WL 1533379, at *2 (D.N.H. Apr. 16, 2010) (citing Costello v. United States, 350 U.S. 359, 408-09 (1956)); accord United States v. Welch, 327 F.3d 1081, 1090 (10th Cir. 2003); see, e.g., United States v. Litvak, 2013 WL 5740891, at *6 (D.Conn. Oct. 21, 2013) (denying motion to dismiss indictment and noting that defendant “offers evidence outside of the Indictment” and thus “attempts to put on his case for why his alleged misstatements did not violate section 1031 in a pre-trial motion to dismiss”). Adhering to this framework, the facts, as drawn from the Superseding Indictment, show the following.

FACTUAL BACKGROUND

In 2016, the victim was in custody of the Massachusetts Department of Children and Families (DCF) after running away from home. (Docket Entry # 1, p. 1).

The victim met defendant in 2017, when she was a patient at Anna’s Center for Women and Children (“Anna’s”). Defendant worked at Anna’s as a security guard. At the time, the victim was 15 years old

and defendant was 30 years old. (Docket Entry # 1, p. 2). Despite full knowledge of the victim's age, defendant initiated a sexual relationship with the victim. In August 2017, the victim and defendant lived together in various residencies ranging from the victim's mother's home, the defendant's car, hotels around Boston and the defendant's aunt's house. Defendant abused the victim through the length of the relationship.

At some point, defendant began prostituting the victim at 16 years old. Defendant posted advertisements for the victim online, and provided her with a cell phone to speak with prostitution customers.

In May 2018, defendant took the now 17-year-old victim to Philadelphia for the purpose of sex trafficking. (Docket Entry # 1, p. 3). By October 2018, the defendant arranged for the victim to work at a strip club using a fake identification card. Defendant kept all the income earned by the victim, only allowing her to spend it for breakfast and transportation to the strip club. When the victim told defendant she wanted to terminate their relationship, defendant threatened the victim to force her to resume prostitution.

Around the victim's 18th birthday, in August 2019, the victim became pregnant with defendant's child. The victim called the defendant's mother, who gave the victim money for a bus ticket back to Massachusetts, where the victim gave birth in December 2019. (Docket Entry # 1, p. 4).

After the birth of the victim's child, defendant convinced the victim to move back in with him, though she left after the defendant

became violent again. The victim moved back to Massachusetts and obtained a restraining order against defendant, which remains active.

DISCUSSION

I. Insufficiently Vague Indictment

Defendant seeks to dismiss the indictment on the bases that it is insufficient, vague, and only recites the general terms of the statute. (Docket Entry # 54, pp. 5-6).

The government argues defendant's motion to dismiss fails on the merits because the indictment conforms with the requirements of Rule 7(c) and gives adequate notice of the charges defendant must meet. (Docket Entry # 68, pp. 4-5). The government maintains language that recites the general terms of the statute is acceptable as long as the statute clearly sets forth the essential elements of the crime to be punished and provides the defendant with notice. Id. at 5.

The seminal case regarding indictment sufficiency is Hamling v. United States. 418 U.S. 87 (1974). The defendants in Hamling were indicted for mailing obscene content and contended that their indictment was insufficient because it charged them using only the statutory language, and argued that the definition of obscenity was vague. Id. at 97, 117. The court rebuked this argument, noting that "obscene" was a legal term of art with enough meaning to give the defendant notice. From here, the court held the indictment to be adequate, because the statutory language set forth all the elements necessary of the charged offense. Id. at 118. Hamling further

established an indictment to be sufficient when it contains: (1) the elements of the offense charged, (2) informs a defendant of the charges against which they must defend and (3) enables them to plead an acquittal or conviction without fear of double jeopardy. Id. at 117.

Hamling can be contrasted with Russell v. United States, where the indictment was deemed insufficient. 369 U.S. at 754-768 (1962). The statute at issue in Russell, 2 U.S.C. § 192, required determining whether the questions to be asked were relevant to the subject under inquiry. Id. at 769. Because the indictment to the defendants only noted that the defendants did not appear for their hearing before the congressional committee and lacked the subject matter to be discussed, as required by §192, a grand jury could not determine whether the questions were relevant to the subject under inquiry. Id. at 764. Therefore, in the context of §192, the indictment served to these defendants was insufficiently detailed. Id. at 769.

Other cases follow the framework set out by Hamling. In United States v. Fernandez, the government indicted defendants for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) and drug-trafficking charges related to their involvement with the Mexican Mafia. 388 F.3d 1199, 1214 (9th Cir. 2004). Defendants in Fernandez challenged their indictment because the government failed to allege how violations under RICO were conducted. Id. at 1217. However, the Fernandez Court held that facts or theories alleging how interstate

commerce was affected by the defendants' conduct was not required in an indictment for RICO or drug-trafficking charges. Id. at 1218.

In United States v. Stepanets, the Court examined the indictments which charged defendants with an array of illegal conduct as principals and abettors in dispensing misbranded drugs in violation of the Food, Drug and Cosmetic Act. 879 F.3d 367, 369 (1st Cir. 2018). The Stepanets Court elaborated that the indictment was sufficient because it included the statutory bases for the counts, with key elements, factual backdrops and included dates, locations and of the illegal drug shipments in accordance with what was required with the Food, Drug and Cosmetic Act. Id. at 373.

Defendant argues "where guilt is dependent on a specific identification of fact, the indictment must do more than simply repeat the language of the criminal statute." 369 U.S. 749 (1962). This is misguided. This is where the specific information is needed for charging within the statute so much where it is an element of the statute. Hamling informs that for an indictment to be sufficient, it must: (1) contain the elements of the offense charged, (2) inform charges against which defendant must defend and (3) enable defendant to plead an acquittal or conviction without fear of double jeopardy. 418 U.S. 87, 117 (1974).

Defendant's indictment includes a list of statutes violated, and dates and location ranges when the statutes were violated. Listing statutes can be sufficient if the above elements are satisfied. Defendant's indictment is adequately clear, even if it repeats the

statutory language because it apprises him of the charges against what he must defend. See Hamling, 418 U.S. at 117-118. The language in the indictment notified defendant of an 8-month time frame and locations where the criminal acts occurred. See Stepanets. Defendant was charged with sex trafficking of a minor. §1591 outlaws sex trafficking of children by force, fraud, or coercion in plain language. See §1591 (stating “whoever ... [affects] interstate or foreign commerce...and cause[s] the person to engage in a commercial sex act ... shall be punished as provided in subsection (b)). It specifies defendant solicited Minor Jane Doe to engage in commercial sex acts through force in reckless disregard to Minor Jane Doe’s age. The language also defines the terms used. While defendant argues that some terms, like “commercial sex act” are vague, these are legal terms of art defined within the statute. See Hamling, 418 U.S. at 117-118; See § 1591 (defining “commercial sex act” as any sex act on account of which anything of value is given to or received by any person). Such detail is sufficient to apprise defendant of the conduct which he is alleged to have committed.

Defendant’s claim of insufficient indictment can be distinguished from Russell through the nature of the statutes violated. §192 at issue in Russell indicates that the questions to be asked must be detailed as well as the specific subject matter of the congressional inquiry. 369 U.S. at 764. However, §1591 does not bear such requirements. The statute is specific in the conduct barred, and provides relevant definitions for the terms of art. Even stating the statute, word for word, would apprise a defendant of the conduct

against which they must defend, especially because dates and time ranges are provided.

II. Insufficient evidence for grand jury to indict

Defendant further argues that the counts fail to specify how defendant's actions relate to or intended to engage in the charged crime. Defendant contends that the government has provided insufficient evidence for a grand jury to return an indictment and has not specified how the defendant committed the charged crimes.

When a defendant seeks dismissal of an indictment, the question is whether the allegations in the indictment are sufficient to apprise the defendant of the charged offence. The sufficiency of evidence to support the charge is not tested. Savarese, 686 F.3d at 7.

In United States v. Guerrier, the defendant was indicted for conspiring to violate the Hobbs Act, and moved to dismiss his indictment, claiming that the prosecutors produced no evidence during discovery that his acts affected interstate commerce. 669 F.3d at 3. However, the Guerrier court held that motions to dismiss cannot be used to test the sufficiency of the evidence behind an indictment's allegations. Id. at 4. Rather, a sufficient indictment handed down by an empaneled grand jury is enough to call for a trial of the charges on the merits where evidence can be tested. Id.

This is also seen in Costello v. United States, where defendant was indicted for attempting to evade payment of income taxes. 350 U.S. 359, 359. The defendant filed for a motion to dismiss based on an

affidavit stating there was no evidence before the grand jury which could have indicted him because it was based on hearsay. Id. at 360. In its holding, the court explained that the Constitution does not prescribe the kind of evidence upon which must be presented to grand juries to indict, and that grand jurors were not hampered by procedural or evidentiary rules. Id. at 362. The Fifth Amendment's grand-jury guarantee does not give defendants a right to a preliminary trial to determine adequacy of evidence underlying the indictment. Id. at 354. Therefore, a valid indictment itself is enough to call for a trial on the merits. Id.

C. Analysis

With the above discussion in mind, the competency and adequacy of the evidence is not at issue in the indictment stage Defendant's issue with his indictment is that the government has not specified how he had committed the charged offenses. This is tantamount to testing the sufficiency of the evidence at the indictment stage. See id. This claim then, must be dismissed.

In light of the above discussion, defendant's argument is insufficient to dismiss his indictment. The Superseding Indictment adequately apprised the defendant of the charges against him, which is all that need be considered in a motion to dismiss an indictment.

CONCLUSION

In accordance with the foregoing discussion, the court **RECOMMENDS** that the motion to dismiss (Docket Entry # 54) be **DENIED**.

Applicant Details

First Name	Simon
Last Name	Poser
Citizenship Status	U. S. Citizen
Email Address	sposer@law.gwu.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>2030 F Street</div> <div>City</div> <div>Washington</div> <div>State/Territory</div> <div>District of Columbia</div> <div>Zip</div> <div>20006</div> </div> </div>
Contact Phone Number	7186500272

Applicant Education

BA/BS From	Haverford College in Pennsylvania
Date of BA/BS	May 2019
JD/LLB From	The George Washington University Law School
	https://www.law.gwu.edu/
Date of JD/LLB	May 19, 2024
Class Rank	25%
Law Review/Journal	Yes
Journal(s)	Federal Communications Law Journal - The Tech Journal
Moot Court Experience	Yes
Moot Court Name(s)	Moot Court Board

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	Yes
----------------------------------	-----

Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Recommenders

Lerner, Renée
rlerner@law.gwu.edu
(703) 528-8155

Tillipman, Jessica
jtillipman@law.gwu.edu
202-994-2896

Melinda, Roth
melindaroth@law.gwu.edu

**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

SIMON AUGUST POSER

2030 F Street NW, Apt 509, Washington, D.C. 20006 · (718)-650-0272 · sposer@law.gwu.edu

The Honorable Kimberly Swank
United States District Court for the Eastern District of North Carolina
United States Courthouse
201 Evans St Rm 209
Greenville, NC 27858

Dear Chief Judge Mueller:

I am a rising third-year law student at The George Washington University Law School, writing to express my interest in a 2024–25 clerkship in your chambers. I would be honored to clerk in your chambers, as I hope to gain valuable legal research and writing experience, and gain the insight needed to be a successful civil litigator and future federal prosecutor.

I would bring strong legal research and writing skills to the clerkship position. As a judicial intern for the Honorable Jason Park in the D.C. Superior Court, I was tasked with researching and drafting opinions in criminal cases and had to produce high quality work product on tight deadlines. Additionally, as part of my membership in the Federal Communications Law Journal, I am charged with cite-checking and editing assignments of forthcoming scholarly publications. My own student note, which discusses current circuit splits regarding whether warrantless use of advanced surveillance systems violates the Fourth Amendment and proposes a new test to analyze their usage, has been selected for publication in Volume 76 of the journal. Finally, for my Fall 3L semester I will be interning for the Honorable Timothy J. Kelly, where I will continue to strengthen my writing skills and develop my knowledge of litigation in the federal system.

In my current role as a summer associate at Seeger Weiss, I assist attorneys with complex civil litigation matters in federal courts around the country. In my short time with the firm, I have helped research and draft sections of an opposition to a motion to dismiss in a class action lawsuit against social media companies, assist in drafting complaints and research memoranda in False Claims Act cases representing corporate whistleblowers, and drafted briefing materials for attorneys in an MDL antitrust case. The experiences I have accumulated at Seeger Weiss have prepared me to deal with complicated civil litigation matters, especially discovery disputes.

I have also gained experience working on criminal matters for federal prosecutors, as it is my high aspiration to one day serve the public as an Assistant United States Attorney. During my 1L summer I interned in the U.S. Attorney's Office in EDNY, where I assisted prosecutors with complex fraud and organized crime cases. I drafted a number of motions and memoranda during my time there, and provided key research to a prosecution team in the midst of trial that led to a successful ruling in regard to how the jury was instructed. This coming Spring I will return to the DOJ to intern for the Civil Fraud Section, where I will assist federal prosecutors with litigation of False Claims Act cases.

I believe all these experiences will make me a strong judicial law clerk in your chambers next year, and I know and appreciate the value a judicial clerkship will add to my career. I have attached my resumé, transcript, writing sample and references for your review. Thank you for your time and consideration.

Respectfully,
Simon August Poser

SIMON AUGUST POSER

2030 F Street NW, Apt 509, Washington, D.C. 20006 · (718)-650-0272 · sposer@law.gwu.edu

EDUCATION

The George Washington University Law School

Washington, D.C.

J.D. Expected, GPA: 3.630

May 2024

- Honors:* Thurgood Marshall Scholar (Top 16% to 35% of class, to date)
Dean's Recognition for Professional Development
- Journal:* *Federal Communications Law Journal – The Tech Journal* (Associate Editor)
- Note:* *Living in Private: Reinvigorating the Fourth Amendment in the Digital Era by Providing Clear and Consistent Rules to Courts* (Publication Forthcoming)
- Skills Boards:* Moot Court Board (Member); Mock Trial Board (Member)
- Activities:* Tutor (Corporations, Criminal Procedure, Evidence); Anti-Corruption and Compliance Association (President, 2022-2023 term); SBA Mentor; Mock Trial Coach

Haverford College

Haverford, PA

B.A., Political Science, GPA: 3.278; Major GPA: 3.83

May 2019

- Activities:* *The Clerk Newspaper* (News Editor); Student's Council (Junior Class Representative)

EXPERIENCE

Civil Fraud Section, United States Department of Justice

Washington, D.C.

Incoming Legal Intern

January 2024—April 2024

The Honorable Timothy J. Kelly, District Judge, D.C. District Court

Washington, D.C.

Incoming Judicial Intern

September 2023—December 2023

Seeger Weiss, LLP

New York, NY/Ridgefield Park, NJ

Summer Associate

June 2023—August 2023

- Provided legal research for and assisted in drafting opposition to motion to dismiss in nationally publicized class action/MDL case against social media companies
- Supported deposition of marketing executive at Fortune 500 company
- Drafted sections of complaint for and researched various issues for False Claims Act cases

The Honorable Jason Park, Associate Judge, D.C. Superior Court

Washington, D.C.

Judicial Intern

January 2023—April 2023

- Conducted legal research and made recommendations for cases before Judge Park
- Drafted orders and bench memoranda, made case binders for the judge's use in hearings and trials

U.S. Attorney's Office for the Eastern District of New York, Criminal Division

Brooklyn, NY

Legal Intern, Securities Fraud and Organized Crime/Gangs Sections

May 2022—August 2022

- Conducted legal research, wrote motions and memoranda on various issues relating to criminal procedure, evidentiary disputes, statutory interpretation, and other questions of criminal law
- Prepared witness outlines and slides for closing statement in multiple trials

Covington and Burling, LLP

Washington, D.C.

Litigation Paralegal

September 2019—July 2021

- Provided logistical support to lawyers for litigation and investigative matters in various practice groups
- Served document productions, organized review databases, and assisted in document review
- Edited, cite checked, and filed numerous briefs, motions, and other pleadings

INTERESTS

- Competitive tennis player (17 years); hiking in national parks (7 visited overall); art history; theater

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

Gwid : G32358278

Date of Birth: 19-MAY

Date Issued: 06-JUN-2023

Record of: Simon A Poser

Page: 1

Student Level: Law
Admit Term: Fall 2021Issued To: SIMON POSER
SPOSER@GWU.EDU

REFNUM:5731032

Current College(s): Law School
Current Major(s): Law

SUBJ NO COURSE TITLE CRDT GRD PTS

GEORGE WASHINGTON UNIVERSITY CREDIT:

Fall 2021

Law School
Law

LAW 6202	Contracts Chatman	4.00	B-	
LAW 6206	Torts Schoenbaum	4.00	A-	
LAW 6212	Civil Procedure Berman	4.00	B+	
LAW 6216	Fundamentals Of Lawyering I Rabe	3.00	B+	
Ehrs	15.00	GPA-Hrs	15.00	GPA 3.244
CUM	15.00	GPA-Hrs	15.00	GPA 3.244

Spring 2022

Law School
Law

LAW 6208	Property Nunziato	4.00	A-	
LAW 6209	Legislation And Regulation Schaffner	3.00	B	
LAW 6210	Criminal Law Cottrol	3.00	A-	
LAW 6214	Constitutional Law I Morrison	3.00	A-	
LAW 6217	Fundamentals Of Lawyering II Pusateri	3.00	A	
Ehrs	16.00	GPA-Hrs	16.00	GPA 3.604
CUM	31.00	GPA-Hrs	31.00	GPA 3.430

Good Standing
DEAN'S RECOGNITION FOR PROFESSIONAL DEVELOPMENT

Fall 2022

Law School
Law

LAW 6230	Evidence Saltzburg	4.00	A	
LAW 6360	Criminal Procedure Lerner	3.00	A+	
LAW 6393	First Amendment - Religion Tuttle	3.00	A-	
LAW 6683	College Of Trial Advocacy Saltzburg	3.00	A	
Ehrs	13.00	GPA-Hrs	13.00	GPA 4.000
CUM	44.00	GPA-Hrs	44.00	GPA 3.598

Good Standing
THURGOOD MARSHALL SCHOLAR
TOP 16%-35% OF THE CLASS TO DATE

***** CONTINUED ON NEXT COLUMN *****

SUBJ NO COURSE TITLE CRDT GRD PTS

Spring 2023

LAW 6250	Corporations	4.00	A	
LAW 6252	Securities Regulation	3.00	B+	
LAW 6511	Anti-Corruption And Compliance	2.00	A-	
LAW 6668	Field Placement	2.00	CR	
LAW 6669	Judicial Lawyering	2.00	A	
Ehrs	13.00	GPA-Hrs	11.00	GPA 3.758
CUM	57.00	GPA-Hrs	55.00	GPA 3.630

Good Standing
THURGOOD MARSHALL SCHOLAR
TOP 16%-35% OF THE CLASS TO DATE

Fall 2022

Law School
Law

LAW 6657	Fed Communication Law	1.00	-----
Jrl Note			
Credits In Progress:		1.00	

Spring 2023

LAW 6657	Fed Communication Law	1.00	-----
Jrl Note			
Credits In Progress:		1.00	

Fall 2023

LAW 6218	Prof Responsibility & Ethics	2.00	-----
LAW 6362	Adjudicatory Criminl Procedure	3.00	-----
LAW 6364	White Collar Crime	3.00	-----
LAW 6380	Constitutional Law II	4.00	-----
LAW 6413	Federal Communications Law Jrn	1.00	-----
LAW 6644	Moot Court - Van Vleck	1.00	-----
LAW 6652	Legal Drafting	2.00	-----
Credits In Progress:		16.00	

***** TRANSCRIPT TOTALS *****
Earned Hrs GPA Hrs Points GPA

TOTAL INSTITUTION 57.00 55.00 199.67 3.630

OVERALL 57.00 55.00 199.67 3.630

***** END OF DOCUMENT *****



Katie Cloud
Katie Cloud
Interim University Registrar

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THE GEORGE WASHINGTON UNIVERSITY
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EXPLANATION OF COURSE NUMBERING SYSTEM

All colleges and schools beginning Fall 2010 semester:

1000 to 1999	Primarily introductory undergraduate courses.
2000 to 4999	Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work.
5000 to 5999	Special courses or part of special programs available to all students as part of ongoing curriculum innovation.
6000 to 6999	For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office.
8000 to 8999	For master's, doctoral, and professional-level students.

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

001 to 100	Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit.
101 to 200	Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work.
201 to 300	Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean.
301 to 400	Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. School of Business – Limited to doctoral students.
700s	The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors.
801	This number designates Dean's Seminar courses.

The Law School

Before June 1, 1968:

100 to 200	Required courses for first-year students.
201 to 300	Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval.
301 to 400	Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval.

After June 1, 1968 through Summer 2010 semester:

201 to 299	Required courses for J.D. candidates.
300 to 499	Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission.
500 to 850	Designed for advanced law degree students. Open to J.D. candidates only with special permission.

School of Medicine and Health Sciences and School of Public Health and Health Services before Fall 2010 semester:

001 to 200	Designed for students in undergraduate programs.
201 to 800	Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences.

CORCORAN COLLEGE OF ART + DESIGN

The George Washington University merged with the Corcoran College of Art + Design, effective August 21, 2014. For the pre-merger Corcoran transcript key, please visit <http://go.gwu.edu/corcorantranscriptkey>

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AU	American University	MMU	Marymount University
CORC	Corcoran College of Art & Design	MV	Mount Vernon College
CU	Catholic University of America	NVCC	Northern Virginia Community College
GC	Gallaudet University	PGCC	Prince George's Community College
GU	Georgetown University	SEU	Southeastern University
GL	Georgetown Law Center	TC	Trinity Washington University
GMU	George Mason University	USU	Uniformed Services University of the Health Sciences
HU	Howard University	UDC	University of the District of Columbia
MC	Montgomery College	UMD	University of Maryland

GRADING SYSTEMS

Undergraduate Grading System

A, Excellent; B, Good; C, Satisfactory; D, Low Pass; F, Fail; I, Incomplete; IPG, In Progress; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; P, Pass; NP, No Pass; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the I is replaced by the final grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.

Effective Fall 2003: The grading symbol R indicates need to repeat course.

Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I/ and the grade.

Effective Fall 1987: The following grading symbols were added: A-, B+, B-, C+, C-, D+, D-.

Effective Summer 1980: The grading symbols: P, Pass, and NP, No Pass, replace CR, Credit, and NC, No Credit.

Graduate Grading System

(Excludes Law and M.D. programs.) A, Excellent; B, Good; C, Minimum Pass; F, Failure; I, Incomplete; IPG, In Progress; CR, Credit; W, Authorized Withdrawal; Z, Unauthorized Withdrawal; AU, Audit. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

Effective Fall 1994: The following grading symbols were added: A-, B+, B-, C+, C- grades on the graduate level.

Law Grading System

A+, A, A-, Excellent; B+, B, B-, Good; C+, C, C-, Passing; D, Minimum Pass; F, Failure; CR, Credit; NC, No Credit; I, Incomplete. When a grade is assigned to a course that was originally assigned a grade of I, the grade is replaced with I and the grade. Through Summer 2014 the I was replaced with I and the final grade.

M.D. Program Grading System

H, Honors; HP, High Pass; P, Pass; F, Failure; IP, In Progress; I, Incomplete; CN, Conditional; W, Withdrawal; X, Exempt; CN/P, Conditional converted to Pass; CN/F, Conditional converted to Failure. Through Summer 2014 the I was replaced with I and the final grade.

For historical information not included in the transcript key, please visit

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August 02, 2023

The Honorable Kimberly Swank
United States Courthouse Annex
215 South Evans Street
Greenville, NC 27858-1121

Dear Judge Swank:

It is a great pleasure to recommend Simon Poser for a clerkship in your chambers. Simon is deeply thoughtful about the law and his career. He has an intense interest in criminal law and procedure and is determined to be an Assistant U.S. Attorney. He has taken time to learn about the job, through internships and other professional opportunities. He wants to be an AUSA because, as a current one told him, "It's simple: Your job is to do the right thing, for the right reasons, all the time. It's not to win the most trials, get the longest sentences, or have the last word. Your job is to seek justice, represent your country, and honor the rule of law." That work appeals to Simon.

In my Criminal Procedure class in fall 2022, Simon stood out for his thorough preparation and accurate answers to my questions. He also posed a number of interesting questions that deepened the understanding of the material for the entire class. I was always glad to see his hand raised, as I knew that I and the whole class would benefit.

Given his excellent class participation, I had high expectations for his exam. But he outdid them, earning a grade of A+. His answers to the multiple choice questions showed that he had mastered the doctrine. Simon showed that he grasped the deeper themes of the course and applied them perfectly to the essay question. He demonstrated not only writing talent, but also outstanding analytic ability.

Criminal Procedure was in fact one of Simon's favorite courses in law school. He relished the policy discussions, in particular. He also enjoyed Corporations, especially the topics of fiduciary duties and insider trading. He is hoping to merge his interests in criminal and corporate law to work on white collar cases, as a prosecutor and possibly as a defense lawyer. Before becoming an AUSA, he hopes to work at a law firm doing some combination of commercial litigation and white collar investigative work.

He wrote a note for the Federal Communications Law Journal. He argues that existing Fourth Amendment doctrine in the lower courts is inconsistent respecting contemporary surveillance technologies like pole cameras, geo-fencing, and facial recognition software. He recommends that the Supreme Court adopt a new test to determine when surveillance is too widespread and intrusive to be done without a warrant supported by probable cause. His proposed test relies on objective factors that the Supreme Court has identified in its electronic surveillance cases. He uses recent circuit court decisions that have split on various technologies to show the problems with the status quo and the consistency and clarity his solution would provide.

Simon likes to read contemporary non-fiction and biographies, classic novels, and the occasional spy-thriller. He most recently read Persuasion by Jane Austen, and before that These Truths, a history of the United States, by Jill Lepore.

Simon has great fondness for the neighborhood where he grew up in Brooklyn, Park Slope, near Prospect Park. He is proud to be a New Yorker, and believes he learned there toughness and resilience, as well as an appreciation for a rich diversity of people. His family seems secure and tight-knit; he clearly admires and is grateful to his parents and his older sister and brother. He has a deep appreciation for the arts, relishing playing the clarinet, especially his favorite Bach cantata, and oil painting. He loves to play tennis, including recreational tournaments in DC. I always enjoy conversations with Simon. He radiates thoughtfulness, eagerness to learn, and good cheer. He would be a pleasure to work with and a great asset to your chambers.

Please do not hesitate to contact me if I may be of further assistance.

Very truly yours,

Renée Lettow Lerner
Donald Phillip Rothschild Research Professor of Law
The George Washington University Law School
(202) 994-5776
rlerner@law.gwu.edu

Rene Lerner - rlerner@law.gwu.edu - (703) 528-8155

The George Washington University Law School
2000 H Street NW
Washington, DC 20052

August 02, 2023

The Honorable Kimberly Swank
United States Courthouse Annex
215 South Evans Street
Greenville, NC 27858-1121

Dear Judge Swank:

I am writing to express my enthusiastic support of Simon Poser's application to serve as one of your law clerks. His intelligence, dedication and maturity make him a strong candidate for a judicial clerkship, and he would be an asset to you and your chambers.

I have worked closely with Simon in his capacity as the president of the Anti-Corruption and Compliance Association, of which I am the faculty advisor. The Anti-Corruption and Compliance Association is a student group at GW Law School that organizes and promotes anti-corruption and compliance events and opportunities for students.

Over the past year, Simon has demonstrated exceptional leadership and professionalism in the performance of his duties. For example, during the Spring 2023 semester, Simon organized a high-profile event featuring a large panel of senior attorneys. There were numerous logistical matters that he had to manage for this event to run smoothly, and Simon did an incredible job (while also handling his many other academic obligations). I'm proud to say that the event resulted in record turnout by the student body and phenomenal feedback from the practitioner participants. I was truly impressed by the quality of the program, the number of student attendees, and Simon's outstanding organizational and communication skills. Moreover, in his role as the group's president, he routinely managed a large group of student leaders and demonstrated, repeatedly, that he has excellent management skills and a keen ability to collaborate effectively with his peers.

Simon also took my Anti-Corruption and Compliance course last year, so I had the chance to evaluate his academic coursework, which was very good. Simon routinely contributed to class discussions, attended office hours, and demonstrated enthusiasm for the subject matter by engaging with material outside of the assigned readings – often sharing information with me about cases or current events that touched upon the subject matter of the course. Simon's performance on his take-home exam was also very good. His exam demonstrated not only that he knew and understood the law, but that he could apply it persuasively to a complicated fact pattern. Simon also did an excellent job completing an in-class exercise in which he had to develop corporate compliance enhancements for a company and then "pitch" the enhancements to an expert practitioner. Simon received excellent feedback from the attorney evaluating his performance, who commented on his strong public speaking skills and persuasive written recommendations.

Although Simon's academic credentials alone make him a strong candidate for this position, I should note that Simon is someone whom you would enjoy having in your chambers. He is personable, friendly, and has the maturity and professionalism to thrive. I expect that, upon graduation, he will prove himself to be a consummate professional.

As you select your clerks this year, I hope you will consider Simon as a prime candidate. If I can answer any questions you might have about Simon, please do not hesitate to call me at (202) 994-2896. I thank you for your consideration.

Best Regards,

Jessica Tillipman
Assistant Dean for Government Procurement Law Studies
The George Washington University Law School
2000 H Street, N.W.
Washington, D.C. 20052
Tel (202) 994-2896
jtillipman@law.gwu.edu

August 02, 2023

The Honorable Kimberly Swank
United States Courthouse Annex
215 South Evans Street
Greenville, NC 27858-1121

Dear Judge Swank:

I am writing to recommend most highly and enthusiastically Simon Poser for a clerkship.

Every so often, a student stands out in a sea of accomplished, intellectually curious, smart law students. Simon Poser is that student.

In the spring of 2023, Simon took my Corporations class at George Washington University Law School. Even in our first few sessions, he asked some probing questions that indicated his intuitive understanding of the complex Corporations material.

When comparing Simon to other law students I have taught over the past eight years, I would rank him among the most inquisitive and knowledgeable. Only a handful of students each year have earned an outright A on any of my exams. Simon was one of a very few in Corporations to earn an outright A, and I expect a similar grade from him in my Corporate Finance class next spring.

I have been able to get to know Simon well, as we would talk before and after class, as well as after the semester ended. He was excited to share with me that he was offered and accepted prestigious judicial and legal internships for the 2023-2024 academic year. Given Simon's experience as a legal intern with the U.S. Attorney's Office for the Eastern District of New York, as a judicial intern in several courts and then with the Department of Justice's Civil Fraud Section, Simon will be able to hit the ground running in your court. All this relevant experience will serve him well.

Simon is exactly the kind of clerk I would want if I were a judge: someone who is prepared and knowledgeable, but also knows how to spot the issue and ask all the right questions. He has the perfect mix of skills to succeed as a clerk.

In addition, for such a clerkship, his character therefore matters. I can -- without any hesitation -- recommend Simon not only as an excellent student but as a good person too with a solid character. He has told me about his family as both his parents are attorneys, and his mom has served as a justice in the New York Court of Claims for the past decade or so. Simon hopes to live up to these big shoes to fill. I have no doubt he will do just that, and leave his own mark.

Simon Poser would be an outstanding clerk. He is a knowledgeable young lawyer, but always keen to learn more. Based on his efforts in our class and his internship experiences, I am positive Simon would stand out in your courtroom the same way he has stood out in my classroom. He is extremely personable, keenly intelligent, hardworking and would be a tremendous asset to your court.

Please do not hesitate to contact me with any further questions about his qualifications. Thank you for your consideration.

Sincerely,

Melinda Roth

Visiting Assistant Professor
The George Washington University Law School
melindaroth@law.gwu.edu

Roth Melinda - melindaroth@law.gwu.edu

SIMON AUGUST POSER

2030 F Street NW, Apt 509, Washington D.C. 20006 · (718)-650-0272 · sposer@law.gwu.edu

WRITING SAMPLE

This writing sample is a draft order I wrote during my internship in the chambers of the Honorable Jason Park, who currently serves as an Associate Judge on the D.C. Superior Court. This order pertained to a motion filed by the government to issue a protective order for the dissemination of body worn camera footage from police officers involved in the case. Specifically, the government wanted to restrict who could view this footage given that it contained personal information of individuals who they were worried could have their privacy or safety put at risk if unauthorized persons obtained possession of the footage.

The name of the defendant, as well as other identifying information from the case, has been redacted from this writing sample in accordance with the request of Judge Park and his clerks. If you would like to receive any additional explanation regarding the order or the facts of the case, please let me know.

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION – FELONY BRANCH**

UNITED STATES OF AMERICA,

v.

[Redacted],

Defendant.

Case No.: [Redacted]

Judge Jason Park

[Redacted]

ORDER

This matter comes before the court on the government’s opposed motion for a protective order governing body worn camera (“BWC”) materials, filed on [redacted], 2023, and the defendant’s opposition thereto, filed [redacted], 2023. Having reviewed the materials in this case, any opposition thereto, and the records therein, for the reasons stated below the government’s motion is **GRANTED**.

PROCEDURAL AND FACTUAL BACKGROUND

The defendant, [redacted], is charged with carrying a pistol without a license. The defendant was arrested and presented before the Court on [redacted], 2022. A preliminary hearing took place on [redacted], 2023. On [redacted], 2023, the government filed this motion (“Gov’t Mot. Protective Order”) seeking a protective order to prohibit dissemination of BWC materials to any party outside of the “legal defense team”¹ and limiting the use of these materials

¹ “The ‘legal defense team’ includes defense counsel (defined as counsel of record in this case, including any post-conviction or appellate counsel) and any attorneys, investigators, paralegals, support staff, and expert witnesses who are advising or assisting defense counsel in connection with this case. The legal defense team shall not include the defendant or the defendant’s family members, friends, or associates.” Gov’t’s Proposed Order at [redacted].

by the defendant and the legal defense team exclusively to this case. *See generally* Gov’t’s Proposed Order. The defendant filed his opposition on [redacted], 2023, asking the Court to deny the government’s motion for a protective order governing BWC materials under the First, Fifth, and Sixth Amendments, Superior Court Criminal Rule 16, and *Brady v. Maryland*, 373 U.S. 83 (1963). *See* Def. Opp’n at [redacted].

LEGAL STANDARD

Superior Court Rule of Criminal Procedure 16(d)(1) provides that “[a]t any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.” This includes the issuance of protective orders, which are used frequently in criminal cases to facilitate the prompt disclosure of information while protecting the privacy and safety of interested third parties.² When a Superior Court procedural rule, such as Rule 16, is modeled after an identical federal counterpart³, this Court may look to federal case law interpreting the corresponding federal rule “for guidance on how to interpret our own [rule].” *See, e.g., Bilal v. United States*, 240 A.3d 20, 27 n.7 (D.C. 2020) (quoting *Estate of Patterson v. Sharek*, 924 A.2d 1005, 1009-10 (D.C. 2007)); *Rowland v. United States*, 840 A.2d 664, 678 & n.16 (D.C. 2004).

A party seeking a protective order bears the burden of showing good cause. *See, e.g., United States v. Cordova*, 806 F.3d 1085, 1090 (D.C. Cir. 2015). Good cause is established through a “particularized, specific showing.” *See, e.g., United States v. Bulger*, 283 F.R.D. 46, 52 (D. Mass. 2012); *United States v. Smith*, 985 F. Supp. 2d 506, 523-24 (S.D.N.Y. 2013). “Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not

² *See United States v. O’Keefe*, No. 06-CR-249, 2007 WL 1239204, at *2 (D.D.C. Apr. 27, 2007) (noting that “[p]rotective orders in criminal cases are not uncommon”); *Alderman v. United States*, 394 U.S. 165, 185 (1969) (advancing the principle that the “trial court can and should, where appropriate, place a defendant and his counsel under enforceable orders against **unwarranted disclosure** of the materials which they may be entitled to inspect.”) (emphasis added).

³ Federal Rule of Criminal Procedure 16(d) states that the court “may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.”

support a good cause showing.” *United States v. Wecht*, 484 F.3d 194, 211 (3d Cir. 2007) (quoting *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994)). “The nature of the showing of particularity, however, depends upon the nature or type of protective order at issue.” *Bulger*, 283 F.R.D. at 52-53; *see also United States v. Cudd*, 534 F. Supp. 3d 48, 57 (D.D.C. 2021) (noting that in cases that involve substantial amounts of discovery, “it is consistent with the proper allocation of evidentiary burdens for the Court to construct a broad . . . protective order upon a threshold showing by the government of good cause.” (quoting *Smith*, 985 F. Supp. 2d at 546)).

In deciding whether to enter a protective order and what the terms of any protective order should be, the Court must balance the interests asserted by the moving party, the interests of the non-moving party, and the public interest. *See Smith*, 985 F. Supp. 2d at 523-24; *see also United States v. Davis*, 809 F.2d 1194, 1210 (6th Cir. 1987) (demonstrating that trial courts must consider whether the imposition of the protective order would substantially prejudice the defendant). Furthermore, the privacy interests of third parties may properly be considered in a court’s balancing of competing interests. *See Smith*, 985 F. Supp. 2d at 524-25.

ANALYSIS

In this case, the Court will grant the government’s motion because the government has established good cause to issue the proposed protective order governing BWC materials. First, the government has an interest in protecting the privacy rights and safety concerns of crime victims, witnesses, and third parties. As the government contends, BWC footage frequently includes personal identifying and other sensitive information, the dissemination of which raises potential privacy and safety concerns absent a protective order. *See Gov’t Mot. Protective Order at [redacted]*. The fact that D.C. has adopted regulations governing the disclosure of BWC

footage to the public further reinforces this Court's finding that restrictions on the dissemination of BWC footage are warranted. *See* D.C. Mun. Regs. Tit. 24 § 3902.5(a); *see also United States v. Johnson*, 314 F. Supp. 3d 248, 257 (D.D.C. 2018) (acknowledging that D.C.'s regulations governing the disclosure of BWC footage to the public, although not controlling, "represent a policy judgment that such materials tend to contain information that implicates privacy concerns"). Here, the proposed protective order furthers the government's legitimate interest in protecting the privacy interests and safety concerns of individuals captured on the BWC footage.

Second, the issuance of a protective order will not prejudice the defendant. Rather, the issuance of a protective order will facilitate the early disclosure of BWC materials, which defense counsel can review with the defendant and others subject to the restrictions detailed in the protective order. While this Court understands the concerns articulated in the defendant's opposition, nothing in the proposed order prevents the legal defense team from copying materials as they deem necessary for use in connection with this case and retaining a copy following the conclusion of the case. *See* Govt's Proposed Order at [redacted]. Furthermore, nothing prevents the defendant from seeking to modify the protective order at any time. *See id.* at [redacted].

However, the Court is persuaded that allowing defense counsel to show portions of the BWC footage that do not contain sensitive information to prospective witnesses and others will better facilitate defense counsel's investigation. Thus, this Court will modify the language of the protective order to allow defense counsel to authorize the viewing of the BWC footage where doing so reasonably can be expected to further the investigation of the defendant's case and the preparation of his defense.⁴

⁴ This language is similar to language used by the District Court for the District of Columbia in *Johnson*, 314 F. Supp. 3d at 256, and in *United States v. Kingsbury*, 325 F. Supp. 3d 158 (D.D.C. 2018). The *Johnson* court went further by requiring the government to redact all discoverable BWC footage before disclosing it to the defense in the absence of a consent protective order. *Johnson*, 314 F. Supp. 3d at 253-55. At this stage, this Court is unwilling to

Third, the issuance of this protective order is in the public interest. The government's proposed protective order does not apply to BWC materials that are, or later become, part of the public record. *See* Govt's Proposed Order at [redacted]. Additionally, any interest the public has in unfettered access to BWC footage must be weighed against the privacy concerns of individuals captured on camera. *See Smith*, 985 F. Supp. 2d at 524 (collecting cases). Thus, the Court finds that the protective order strikes an appropriate balance between protecting the privacy interests of third parties and while facilitating efficient discovery and enabling the defendant to investigate his case and prepare for a potential trial.⁵

Moreover, the Court disagrees with the defendant's argument that the government's proposed protective order violates his Sixth Amendment right to effective assistance of counsel by hindering defense counsel's ability to conduct a thorough investigation, consult with experts, and moot with attorneys at the Public Defender's Service. Def. Opp'n at [redacted]. The definition of "legal defense team" in the government's proposed protective order includes "any attorneys, investigators, paralegals, support staff, and expert witnesses who are advising or assisting defense counsel in connection with this case." Govt's Proposed Order at [redacted]. This language is unambiguous and broad enough to allow defense counsel to consult with experts and moot with other PDS attorneys. The Court also disagrees that the proposed protective order impermissibly infringes on the defendant's ability to participate in his own defense. The protective order allows defense counsel to share BWC footage with the defendant and authorizes defense counsel to leave

place the burden of redacting all discoverable BWC footage on the government because such a policy would cause a substantial delay in disclosure and "is inconsistent with the rules requiring efficient and expeditious discovery." *See United States v. Dixon*, 355 F. Supp. 3d 1, 8 (D.D.C. 2019) (distinguishing *Johnson*, granting BWC protective order, and refusing to shift the burden of redacting BWC footage to the government).

⁵ Defendant correctly points out there is a presumption of public access to court documents, and that in order to overcome the presumption against protective orders the government must show its protective order is tailored to serve a compelling government interest. *See* Def's Opp'n at [redacted]. For the reasons enumerated herein, this Court finds the government's need to protect the privacy rights of individuals captured on BWC footage is such an interest, and the order is sufficiently tailored to serve it without infringing on the defendant's constitutional rights.

a copy of the materials, redacted of sensitive information, with the District of Columbia Department of Corrections (“DCDOC”) so that the defendant can view the materials pursuant to DCDOC’s procedures.

Finally, the Court does not agree with the defendant that the issuance of a protective order would infringe on defense counsel’s ethical duties. Defendant claims that the government’s proposed protective order contravenes the rules of ethics by preventing defense counsel from providing the defendant with all disclosed BWC footage in its unredacted form as part of his “entire file” at the conclusion of his case. Def. Opp’n at [redacted]. Nothing in the D.C. Bar opinions cited to by the defendant convinces the Court that the defendant is entitled to retain unredacted BWC materials as part of his entire file at the close of his case. *See United States v. Wolfendale*, 2020 D.C. Super. LEXIS 34, *10 n.1 (D.C. Super. Ct. November 30, 2020) (granting BWC protective order over the defendant’s opposition and finding that “the [d]efendant’s attorney has no ethical obligation to maintain the body-worn camera [footage] after an acquittal or dismissal, because the Defendant is not entitled to the body-worn camera [footage], and thus [it] does not fall under the obligations in D.C. Rules of Professional Conduct 1.16(d)”).

Defense counsel seems to believe that the government’s proposed protective order requires the return of all copies of the BWC footage to the United States Attorney’s Office at the conclusion of the case. *See* Def. Opp’n at [redacted]. This is simply not the case. In fact, the government’s proposed protective order explicitly allows defense counsel to “retain a copy of the BWC materials following the conclusion of this case.” Govt’s Proposed Order at [redacted].

In light of this showing, and in order to protect the individual officers’ privacy interests while also expediting the flow of discovery, the Court grants the government’s motion for a protective order in this case. *See Johnson*, 314 F. Supp. 3d at 251-52. The proposed protective

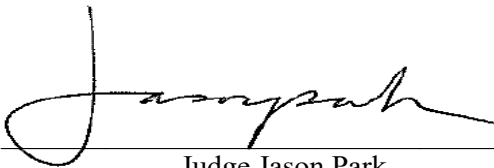
order appropriately facilitates speedy discovery while protecting the security and privacy interests of witnesses and third parties. The Protective Order Governing Body Worn Camera Footage issued below adopts the government's proposed language, except that paragraph four (and the subsequent paragraphs where appropriate) are modified to allow defense counsel to authorize the viewing of the BWC footage by any person where doing so reasonably can be expected to further the investigation of the defendant's case and the preparation of his defense. Defense counsel may seek modifications to the protective order to ensure that the defendant is not prejudiced.

Accordingly, it is this [redacted] day of [redacted], 2023, hereby

ORDERED that the government's motion is **GRANTED**; and it is further

ORDERED that a signed protective order governing body worn camera materials will issue separately.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Jason Park", is written over a horizontal line.

Judge Jason Park
Superior Court of the District of Columbia

Copies to:
[Redacted]
Via CaseFileXpress

Applicant Details

First Name **Stefan**
 Middle Initial **A**
 Last Name **Pruessmann**
 Citizenship Status **U. S. Citizen**
 Email Address stefan.a.pruessmann@vanderbilt.edu

Address

Address
Street
318 Village at Vanderbilt
City
Nashville
State/Territory
Tennessee
Zip
37212
Country
United States

Contact Phone Number **8044779199**

Applicant Education

BA/BS From **College of William and Mary**
 Date of BA/BS **May 2021**
 JD/LLB From **Vanderbilt University Law School**
<http://law.vanderbilt.edu/employers-cs/judicial-clerkships/index.aspx>
 Date of JD/LLB **May 10, 2024**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Vanderbilt Law Review**
 Moot Court Experience **No**

Bar Admission**Prior Judicial Experience**

Judicial Internships/ Externships **Yes**
Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Enix, Amy
amy.enix@vanderbilt.edu
Sharfstein, Daniel
daniel.sharfstein@vanderbilt.edu
615-322-1890
Armstrong, Kevin
kevin.armstrong@fultoncountyga.gov

This applicant has certified that all data entered in this profile and any application documents are true and correct.

STEFAN A. PRUESSMANN
4728 Rollingwood Lane, Glen Allen, Virginia 23060
804-477-9199 | stefan.a.pruessmann@vanderbilt.edu

August 2, 2023

Judge Kimberly A. Swank
United States Courthouse
201 South Evans Street
Greenville, North Carolina 27858

Dear Judge Swank:

I am writing to apply for a 2024-25 term clerkship in your chambers. I am a third-year student at Vanderbilt Law School and a Managing Authorities Editor for the VANDERBILT LAW REVIEW.

I believe that I would make a strong addition to your chambers. I spent the past summer interning for Judge Curtis L. Collier in the U.S. District Court for the Eastern District of Tennessee. I enjoyed working closely with Judge Collier and his clerks in a variety of civil and criminal matters. I learned the importance of and best approaches to thorough research, precise analysis, and clear writing. This experience has demonstrated to me the importance of collegiality and civility. Additionally, I was selected to be a Managing Authorities Editor for the VANDERBILT LAW REVIEW because of my attention to detail and thoroughness.

Enclosed are my resume, law transcript, writing sample, and letters of recommendation from Professors Sharfstein and Enix as well as Kevin Armstrong of the Fulton County District Attorney's Office. Please contact me if you need any additional information. Thank you for your consideration.

Respectfully,



Stefan Pruessmann

STEFAN A. PRUESSMANN

4728 Rollingwood Lane, Glen Allen, Virginia 23060
stefan.a.pruessmann@vanderbilt.edu
 804-477-9199

EDUCATION

Vanderbilt Law School

Nashville, Tennessee

J.D. Candidate, May 2024

GPA: 3.650

Honors & Activities: VANDERBILT LAW REVIEW, Managing Authorities Editor; Dean's List; Chancellor's Law Scholar; Dean's Leadership Award; Prof. Jennifer Safstrom, Research Assistant; Phi Delta Phi; Jurists on the Go, Secretary; Asian Pacific American Law Student Association; Opening Statement.

College of William & Mary

Williamsburg, Virginia

B.A., History and Government, May 2021

Honors & Activities: Dean's List; Filipino American Student Association, D7 Representative; William & Mary D.C. Summer Institute, American Politics Fellow.

Thesis: The Discrepancy Between Filipino and Filipino-American Memories of Marcos

EMPLOYMENT

U.S. District Court, Eastern District of Tennessee

Chattanooga, Tennessee

Judicial Intern: Summer 2023

Worked with Judge Curtis L. Collier and his clerks on civil and criminal cases. Prepared change of plea colloquies and research memos. Drafted memos with recommendations regarding sentencing and summary judgment motions. Proofread drafts by pro se law clerks.

Fulton County District Attorney's Office

Atlanta, Georgia

Intern: Summer 2022

Worked with Case Intake to prepare criminal cases for indictment by a grand jury. Evaluated initial charges and recommended adjustments when necessary. Used Odyssey and Evidence.com to prepare cases and retrieve necessary information respectively. Worked with Appeals on cases involving pro se appellants. Wrote responses to motions for new trial, proposed orders dismissing motions, and motions to dismiss.

Congressman A. Donald McEachin

Richmond, Virginia

District Intern: Spring 2020 (ended prematurely due to COVID-19 pandemic)

Researched district outreach opportunities. Assisted constituents in casework process.

PERSONAL

Languages: German (A2 proficiency). Enjoy: cycling, hiking, watching college baseball.

REFERENCES

Judge Curtis L. Collier, Senior U.S. District Judge, U.S. District Court for the Eastern District of Tennessee, collier_chambers@tned.uscourts.gov, 423-752-5287

Daniel Sharfstein, Dick and Martha Lansden Chair in Law, Vanderbilt Law School, daniel.sharfstein@vanderbilt.edu, 615-322-1890

Amy Enix, Instructor in Law, Vanderbilt Law School, amy.enix@vanderbilt.edu, 615-343-1876

